

No. 11771

United States
Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM P. STUART, United States Collector
of Internal Revenue in and for the State of
Arizona,

Appellant,

vs.

HENRY ONG, President of Sun Kwung Tong
Company, an association; CHINESE CHAM-
BER OF COMMERCE OF PHOENIX, a
corporation; FRANK ONG, as Chairman of
the Wing Mae School in China, an association;
YEUN LUNG, Chairman of the Chinese
School of Phoenix, Arizona, an association;
and FRED WONG, Chairman of the Chinese
War Relief Association, an association,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States,
for the District of Arizona

FILED

JAN 6 1948

No. 11771

United States
Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM P. STUART, United States Collector
of Internal Revenue in and for the State of
Arizona,

Appellant,

vs.

HENRY ONG, President of Sun Kwung Tong
Company, an association; CHINESE CHAM-
BER OF COMMERCE OF PHOENIX, a
corporation; FRANK ONG, as Chairman of
the Wing Mae School in China, an association;
YEUN LUNG, Chairman of the Chinese
School of Phoenix, Arizona, an association;
and FRED WONG, Chairman of the Chinese
War Relief Association, an association,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

THE [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer	20
Appeal:	
Notice of.....	53
Designation of Record on Appeal.....	54
Statement of Points to Be Relied on by Defendant on.....	55
Attorneys of Record.....	1
Certificate of Probable Cause.....	47
Civil Docket Entries.....	2
Clerk's Certificate to Transcript of Record....	58
—recross	99
Complaint	8
Deposition of Ung Too Thet, Alias Ong Kok Si	172
—direct	175
—cross	191
Designation of Record on Appeal.....	54
Findings of Fact and Conclusions of Law.....	31
Conclusions of Law.....	39
Findings of Fact.....	31
Judgment	41

	INDEX	PAGE
Minute Entries:		
Approving Proposed Findings of Fact and Conclusions of Law.....		40
Extending Time to File Record and Docket Action in Circuit Court of Appeals.....		58
Order Amending Findings of Fact; Deny- ing Motion to Dismiss for Lack of Juris- diction		52
Order on Motion for New Trial.....		48
Order that Plaintiffs Have Judgment.....		30
Proceedings of Trial.....		27
Setting Case for Trial.....		26
Motion to Dismiss for Lack of Jurisdiction....		49
Affidavit of William P. Stuart.....		50
Motion for New Trial.....		43
Memorandum in Support of Motion for New Trial.....		44
Notice of Appeal.....		53
Order for the Taking of a Deposition.....		202
Order for Transmittal of Original Exhibit and Duplicate of Reporter's Transcript.....		55

	INDEX	PAGE
Reporter's Transcript.....		60
Witnesses, Defendant's:		
Brewer, Bennett Y.		
—direct		168
Harman, W. J.		
—direct		134
—cross		138
Knapp, Fred		
—direct		151
—cross		154
Smith, Earl		
—direct		141
—cross		146
Stone, Freeman		
—direct		155
Whiteman, Chas. Michael		
—direct		149
—cross		150
Wong, Kenneth Q. N.		
—direct		158
—cross		166
Witnesses, Plaintiffs':		
Gong, Henry		
—direct		121
—cross		123
Hong, Gee Soot		
—direct		63
—cross		66

	INDEX	PAGE
Witnesses, Plaintiffs'—(Continued):		
Lung, Yuen		
—direct		128
—cross		130
Ong, Frank		
—direct		117
—cross		119
Ong, Henry		
—direct		69
—cross		72
Singh, Yee F.		
—direct		101
—cross		107
Toy, D. H.		
—direct		110
—cross		114
Wong, Fred		
—direct		81
—cross		90
—redirect		98
Statement of Points to Be Relied on by Defendant on Appeal.....		55

ATTORNEYS OF RECORD

FRANK E. FLYNN,
United States District Attorney,

CHARLES B. McALISTER,
Assistant United States Attorney,
Phoenix, Arizona,
Attorneys for Appellant.

JERMAN and FLYNN,
Security Building,
Phoenix, Arizona.
Attorneys for the Appellees. [3*]

HENRY ONG, President of Sun Kwung Tong Company, an association; CHINESE CHAMBER OF COMMERCE OF PHOENIX, a corporation; FRANK ONG, as Chairman of the Wing Mae School in China, an association; YEUN LUNG, Chairman of the Chinese School of Phoenix, Arizona, an association; and FRED WONG, Chairman of the Chinese War Relief Association, an association,
 Plaintiffs,

vs.

WILLIAM P. STUART, United States Collector of Internal Revenue in and for the State of Arizona,

Defendant.

Civ. 804 Phx.

FILINGS-PROCEEDINGS

1946

- Feb. 1—File petition to take deposition before action.
- Feb. 2—File notice to take deposition before action.
- Feb. 25—Enter and file order for taking of deposition of Ung Too Thet.
- Mar. 1—File complaint for return of trust funds.
- Mar. 1—File praecipe for summons.
- Mar. 1—Issue summons and deliver to Jas. E. Flynn, Esq.

1946

- March 13—File summons returned by Marshal showing service on deft. W. P. Stuart and and Frank E. Flynn, U. S. Attorney.
- Mar. 15—File deposition of Ung Too Thet.
- Mar. 15—File exhibits referred to in deposition of Ung Too Thet.
- Sept. 9—File answer of defendant.
- Nov. 1—James Flynn present for pltf. Chas. McAlister present for deft. On stipulation counsel, order set for trial Tuesday, Jan. 14, 1947, at 10:00 o'clock a.m. and consolidate with Civ. 918 for trial.

1947

- Jan. 14—On regularly for trial. J. Flynn present for pltf. Chas. McAlister present for deft. Enter proceedings of trial: On stipulation of counsel, order allow parties call certain witnesses at this time, out of order. File pltf's. Exhibit A. Order recess at 10:00 a.m., Jan. 15, 1947.
- Jan. 14—File deft's. praecipe for issuance of subpoena duces tecum for Charles Wightman and Freeman Stone and Fred Knapp.
- Jan. 14.—Issue subpoenas duces tecum.
- Jan. 15—File deft's. praecipe for issuance of subpoena duces tecum for Louis A. Beattig and Ong Poy.
- Jan. 15.—Issue subpoenas duces tecum.

1947

- Jan. 15—On regularly for further trial: Parties and counsel all present pursuant to recess: Enter further proceedings of trial. File pltf's. Exhibits A, B, C, and D. Order allow pltf. amend pleadings to conform with testimony. Order case submitted on memo. Order allow pltf. 10 days to file opening memo. Defts. 10 days to file answering memo. Pltfs. 5 days thereafter to file reply memo. [4]
- Jan. 20—File pltfs'. memorandum.
- Jan. 30—File def't's. memorandum.
- Jan. 31—File pltfs'. reply memorandum.
- Feb. 6—File subpoena duces tecum returned by Marshal showing service on Louis A. Beattig.
- Feb. 6—File subpoena duces tecum returned by Marshal showing service on Ong Poy.
- Feb. 6—File subpoena duces tecum returned by Marshal showing service on Freeman Stone and Fred Knapp.
- Feb. 6—File subpoena duces tecum returned by Marshal showing service on Charles Wightman.
- Feb. 24—This case having been submitted and by the Court taken under advisement, order judgment for pltfs. Order pltfs'. Exhibits A and C be returned to pltfs. in Civ. 918 Phx.
- Feb. 24—Issue notice to counsel.
- Feb. 28—File pltfs'. proposed Findings of Fact and Conclusions of Law.

1947

- Mar. 21—Docket proceedings had in Chambers at Portland, Oregon, Mon., March 17, 1947: Order pl'tfs'. Proposed Findings of Fact and Conclusions of Law approved and adopted as the Findings of Fact and Conclusions of Law herein and order pl'tfs'. Proposed Judgment be filed, entered and spread on the minutes as the judgment in this case.
- Mar. 21—Enter and file Findings of Fact and Conclusions of Law, dated March 17, 1947.
- Mar. 21.—Enter and file judgment for pl'tfs. Henry Ong \$1500.00, Chinese Chamber of Commerce \$838.40; Frank Ong, etc., \$1,914.00; Yeun Lung, etc., \$1,500.00; Fred Wong, etc., \$11,701.41, dated March 17, 1947, and enter notation thereof in Civil Docket.
- Mar. 21—Enter judgment in J.D. in sum of \$17,453.81.
- Mar. 21—Issue notice to counsel of entry of judgment, etc.
- Mar. 31—File def't's. motion for a new trial.
- May 8—Enter and file Certificate of Probable Cause and enter in J.D.
- May 8—Issue 2 cc. copies of Certificate of Probable Cause to U. S. Attorney.
- May 23—Def't's. motion for new trial having been heretofore submitted, it is ordered that said motion be granted as to the fourth cause of action and denied as to all remaining causes.

1947

May 23—Notify counsel of order of May 23, 1947.

May 26—File deft's. motion to dismiss case for lack of jurisdiction.

May 26—No appearance for pltf. McAlister for deft. McAlister now states respective counsel have stipulated that the numbers of the causes of action as shown on the Findings of Fact herein may be amended to conform to the causes of action as set out in the complaint and it is ordered that the Clerk amend said Findings of Fact accordingly, by interlineation. It is further ordered that the deft's. motion to dismiss for lack of jurisdiction, filed herein this date, be and it is denied. Counsel for deft. now states that counsel for pltfs. has requested that the fourth cause of action of the complaint herein be dismissed without prejudice and it is ordered that said fourth cause of action be and it is dismissed with prejudice.

May 26—Issue notice to counsel of proceedings
May 26, 1947.

Aug. 7—File deft's. notice of appeal (U.S.A. \$5.00).

Aug. 7—File reporter's transcript in duplicate.

Aug. 7—Mail duplicate copy of notice of appeal to Jerman and Flynn, counsel for pltfs.

1947

- Aug. 7—File deft's. designation of record on appeal.
- Aug. 26—Enter and file order for transmittal of original Exhibit B and duplicate transcript to Circuit Court of Appeals, dated and signed at Los Angeles, Calif., August 25, 1947.
- Aug. 26—File deft's. statement of points to be relied on by defendant on appeal.
- Sept. 10—Order extend appellant's time for filing the record on appeal and docketing the action in the U. S. Circuit Court to and including Nov. 5, 1947.
- Sept. 10—Issue notice to counsel.
- Oct. 24—Forward transcript of record on appeal to Circuit Court of Appeal, together with original of pltf's'. Exhibit B, and duplicate of reporter's transcript (U.S.A. \$22.00). [6]

In the United States District Court
for the District of Arizona

No. Civ. 804-Phx.

HENRY ONG, President of Sun Kwung Tong
Company, an association; CHINESE CHAM-
BER OF COMMERCE OF PHOENIX, a
corporation; FRANK ONG, as Chairman of
the Wing Mae School in China, an association;
YEUN LUNG, Chairman of the Chinese
School of Phoenix, Arizona, an association;
and FRED WONG, Chairman of the Chinese
War Relief Association, an association,
Plaintiffs,

vs.

WILLIAM P. STUART, United States Collector
of Internal Revenue in and for the State of
Arizona,

Defendant.

COMPLAINT

(Action for Return of Trust Funds)

Come now the above named plaintiffs by Jerman
& Flynn, their attorneys of record, and for cause
of action against the above named defendant, allege:

I.

That Henry Ong is president of Sun Kwung
Tong Company, an association duly organized, and
at all times hereinafter complained of was and is
now engaged in the merchandizing of Chinese goods,

wares and materials in the City of Phoenix, County of Maricopa, State of Arizona, and that he brings this action for and on behalf of the said association.

That the Chinese Chamber of Commerce is a corporation duly organized and existing under and by virtue of the laws of the State of Arizona, and at all times hereinafter complained of, was engaged in the promotion of business, educational and recreational pursuits for the benefit of its members in the City of Phoenix, County of Maricopa, State of Arizona. [7]

That the Wing Mae School in China is an association organized for the purpose of securing donations and contributions for financial assistance and maintenance of Chinese schools located in the Republic of China; that Frank Ong, as chairman thereof, brings this action for and on behalf of said association.

That the Chinese School of Phoenix, Arizona, is an association organized for the purpose of promoting educational facilities and funds for the Chinese students in Chinese schools located in the City of Phoenix, County of Maricopa, State of Arizona, and that Yeun Lung as chairman thereof brings this action for and on behalf of said association.

That the Chinese War Relief Association is an association organized for the purpose of securing contributions of money and goods to aid in the relief of the Chinese people in the Republic of China, and that Fred Wong as chairman thereof brings this action for and on behalf of said association.

That the defendant is the duly appointed, qualified and acting United States Collector of Internal Revenue in and for the State of Arizona, and that at all times hereinafter complained of was acting in said capacity.

II.

That this action is one over which the above entitled court exercises original jurisdiction and that the amount of the subject matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars.

III.

That at all times hereinafter complained of Ung Too Thet, alias Uung Kok Si, was and is now an individual engaged in the operation of a mercantile business located at 113 East Madison Street, Phoenix, Arizona. [8]

IV.

First Cause of Action

That for a long time prior to the matters herein complained of, the Chinese War Relief Association had been engaged in the solicitation of funds from organizations and individuals. That the said solicitation was conducted for the purpose of securing funds to be used for the benefit of the homeless and destitute residents of the Republic of China. That in the solicitation of said funds various parades, dances and entertaining features of different types had been staged and conducted. That as

a result of the aforesaid activities on behalf of said association, the sum of Fourteen Thousand Dollars (\$14,000.00) had been collected. That on or before October 11, 1945, the said sum, and the whole thereof, was delivered to Ung Too Thet, alias Ung Kok Si, as treasurer of said association, at his place of business, 113 East Madison Street, Phoenix, Arizona, to be held in trust by the said Ung Too Thet, alias Ung Kok Si, for and on behalf of the said Chinese War Relief Association.

The aforesaid delivery of said sum was occasioned by the fact that the association did not have adequate facilities for the safe keeping thereof, and that since the outbreak of hostilities between the Imperial Government of Japan and the United States of America, it was impossible for said association to transmit the said fund, or any part thereof, to its corresponding association in the Republic of China.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the Fourteen Thousand Dollars (\$14,000.00), heretofore delivered to the said Ung Too Thet, as treasurer of the Chinese War Relief Association, to be held in trust for said association, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid Fourteen Thousand Dol-

lars (\$14,000.00) was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof, was not the owner thereof nor any part thereof, and was holding the same for and on behalf of the Chinese War Relief Association as trustee.

That subsequent to the seizure of said fund by the United States narcotic agents, at a date unknown to the plaintiff herein, the aforesaid fund, and the whole thereof, was seized by the above named defendant, and the plaintiff is informed and believes that the said fund, and the whole thereof, is in the possession of the defendant above named. That the plaintiff, Chinese War Relief Association, has demanded return of said fund from the above named defendant, and he has refused to deliver the same, or any part thereof, to the plaintiff.

V.

Second Cause of Action

That prior to the 11th day of October, 1945, the Wing Mae School in China, an association, acting through its chairman, Frank Ong, delivered to Ung Too Thet, as treasurer of said association, at his place of business, 113 East Madison Street, Phoenix, Arizona, the sum of One Thousand Nine Hundred Dollars (\$1,900.00). That said sum was the property of said association and was delivered to the said Ung Too Thet, alias Ung Kok Si, as treasurer as aforesaid, for safe keeping, and to be held by the said Ung Too Thet as trustee for said [10] association.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the One Thousand Nine Hundred Dollars (\$1,900.00), heretofore delivered to the said Ung Too Thet, as treasurer of the Wing Mae School in China, to be held in trust for said association, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid One Thousand Nine Hundred Dollars (\$1,900.00) was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof, and was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Wing Mae School in China as trustee.

That subsequent to the seizure of said fund by the United States narcotic agents, at a date unknown to the plaintiff herein, the aforesaid fund, and the whole thereof, was seized by the above named defendant, and the plaintiff is informed and believes that the said fund, and the whole thereof, is in the possession of the defendant above named. That the plaintiff, Wing Mae School in China, has demanded return of said fund from the above named defendant, and he has refused to deliver the same, or any part thereof, to the plaintiff.

VI.

Third Cause of Action

That the Chinese School of Phoenix, Arizona, acting through its chairman, Yeun Lung, delivered to the said Ung Too Thet, alias Ung Kok Si, as treasurer of said association, at [11] his place of business, 113 East Madison Street, Phoenix, Arizona, the sum of One Thousand Five Hundred Dollars (\$1,500.00) to be held by the said Ung Too Thet, alias Ung Kok Si, as said treasurer, in trust for the benefit of said Chinese Schools of Phoenix, Arizona.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the One Thousand Five Hundred Dollars (\$1,500.00), heretofore delivered to the said Ung Too Thet, as treasurer of the Chinese Schools of Phoenix, Arizona, to be held in trust for said association, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid One Thousand Five Hundred Dollars (\$1,500.00) was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof, was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Chinese Schools of Phoenix, Arizona, as trustee.

That subsequent to the seizure of said fund by the United States narcotic agents, at a date unknown to the plaintiff herein, the aforesaid fund, and the whole thereof, was seized by the above named defendant and the plaintiff is informed and believes that the said fund, and the whole thereof, is in the possession of the defendant above named. That the plaintiff, Chinese Schools of Phoenix, Arizona, has demanded return of said fund from the above named defendant, and he has refused to deliver the same, or any part thereof, to the plaintiff. [12]

VII.

Fourth Cause of Action

That prior to the 11th day of October, 1945, the Sun Kwung Tong Company, an association, acting through its agents and servants, had delivered to Ung Too Thet, alias Ung Kok Si, as treasurer of said association, at his place of business, 113 East Madison Street, Phoenix, Arizona, the sum of One Thousand Nine Hundred Dollars (\$1,900.00) to be held for and on behalf of said association; that the aforesaid money, and the whole thereof, was the property of said association, and the said Ung Too Thet, alias Ung Kok Si, as said treasurer, in holding the aforesaid fund, was acting as trustee for and on behalf of said association.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for viola-

tion of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the One Thousand Nine Hundred Dollars (\$1,900.00), heretofore delivered to the said Ung Too Thet, as treasurer of the Sun Kwung Tong Company, to be held in trust for said association was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid One Thousand Nine Hundred Dollars (\$1,900.00) was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping, thereof, was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Sun Kwung Tong Company as trustee.

That subsequent to the seizure of said fund by the United States narcotic agents, at a date unknown to the plaintiff [13] herein, the aforesaid fund, and the whole thereof, was seized by the above named defendant, and the plaintiff is informed and believes that the said fund, and the whole thereof, is in the possession of the defendant above named. That the plaintiff, Sun Kwung Tong Company, has demanded return of said fund from the above named defendant, and he has refused to deliver the same, or any part thereof, to the said plaintiff.

VIII.

Fifth Cause of Action

That prior to the 11th day of October, 1945, the Chinese Chamber of Commerce, a corporation, acting through its agents and servants, had delivered to Ung Too Thet, alias Ung Kok Si, as treasurer of said corporation, at his place of business, 113 East Madison Street, Phoenix, Arizona, the sum of Eight Hundred Dollars (\$800.00) to be held for and on behalf of said corporation; that the aforesaid money, and the whole thereof, was the property of said corporation, and the said Ung Too Thet, alias Ung Kok Si, as said treasurer, in holding the aforesaid fund, was acting as trustee for and on behalf of said corporation.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the Eight Hundred Dollars (\$800.00), heretofore delivered to the said Ung Too Thet, as treasurer of the Chinese Chamber of Commerce, to be held in trust for said corporation, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid Eight Hundred Dollars (\$800.00) was seized by the [14] arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof,

was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Chinese Chamber of Commerce as trustee.

That subsequent to the seizure of said fund by the United States narcotic agents, at a date unknown to the plaintiff herein, the aforesaid fund, and the whole thereof, was seized by the above named defendant, and the plaintiff is informed and believes that the said fund, and the whole thereof is in the possession of the defendant above named. That the plaintiff, Chinese Chamber of Commerce, has demanded return of said fund from the above named defendant, and he has refused to deliver the same, or any part thereof to the said plaintiff.

Wherefore, plaintiffs pray judgment:

That the above named defendant be directed and required to return to the Chinese War Relief Association the said fund of Fourteen Thousand Dollars (\$14,000.00), or in lieu thereof, said association do have and recover judgment of and from the defendant in a like sum.

That the above named defendant be directed and required to return to the Wing Mae School in China the said fund of One Thousand Nine Hundred Dollars (\$1,900.00), or in lieu thereof, said association do have and recover judgment of and from the defendant in a like sum.

That the above named defendant be directed and required to return to the Chinese Schools of Phoenix, Arizona, the said fund of One Thousand Five Hundred Dollars (\$1,500.00), or in lieu thereof, said association do have and recover judgment of and from the defendant in a like sum.

That the above named defendant be directed and required to return to Sun Kwung Tong Company the said fund of One Thousand [15] Nine Hundred Dollars (\$1,900.00), or in lieu thereof, said association do have and recover judgment of and from the defendant in a like sum.

That the above named defendant be directed and required to return to the Chinese Chamber of Commerce the said fund of Eight Hundred Dollars (\$800.00), or in lieu thereof, said corporation do have and recover judgment of and from the defendant in a like sum.

For such other and further relief as the court may deem equitable and just in the premises.

JERMAN & FLYNN,
By JAMES E. FLYNN,
Attorneys for Plaintiffs.

State of Arizona,
County of Maricopa—ss.

Walter Ong, being first duly sworn, upon his oath deposes and says:

That he is a resident of the State of Arizona, over the age of twenty-one years and competent to make oath; that he is now and has been acting as the agent and interpreter for each of the above named plaintiffs, and that he makes this affidavit for and on behalf of each of the plaintiffs above named; that he has read the foregoing complaint, and he knows the facts stated therein are true in

substance and in fact to his own knowledge, except those matters stated on information and belief and as to those he believes them to be true.

WALTER ONG.

Subscribed and sworn to before me this 28th day of February, 1946.

[Seal] JAMES E. FLYNN,
Notary Public.

My commission expires January 9, 1950. [16]

[Endorsed]: Filed March 1, 1946. [17]

[Title of District Court and Cause.]

ANSWER

Comes Now the above named defendant by Frank E. Flynn, United States Attorney for the District of Arizona, and Charles B. McAlister, Assistant United States Attorney, and in answer to the complaint filed herein, admits, denies and alleges as follows:

I.

In answer to Paragraph I of said complaint, defendant having no knowledge, information or belief sufficient to enable him to answer the allegations therein contained, denies each and every such allegation.

II.

In answer to Paragraph II defendant admits that the amount in controversy exclusive of interest and

costs exceeds the sum of Three Thousand Dollars (\$3,000.00), and that the Court has jurisdiction over the subject matter and the parties.

III.

In answer to Paragraph III defendant denies all material allegations therein contained. [18]

IV.

In answer to Paragraphs IV, V, VI, VII and VIII of said complaint, defendant admits that one Ung Too Thet, alias Ong Kok Si, as more fully appears herein from Paragraph V, was arrested by United States Narcotics agents, for violation of the Harrison Narcotics Act and of the Import and Export Drug Act, at his place of business, 113 East Madison Street, Phoenix, Arizona, on or about the 11th day of October, 1945, and that at the time of his arrest said agents seized certain monies which were in a safe belonging to the said Ung Too Thet, that thereafter pursuant to a deficiency assessment and levy made against Ung Too Thet by the Bureau of Internal Revenue, the said monies, then in the possession of said Narcotics agents, were seized by representative of this defendant in accordance with the provisions of the Federal Revenue laws; that a demand was made of this defendant for the return and release of all the funds he is alleged to hold illegally, but that this defendant refused and continues to refuse to return said funds for the reasons and on the grounds hereinafter set forth.

Further answering said Paragraphs IV, V, VI, VII and VIII, defendant denies that he has in his possession, or has seized, the sum of Fourteen Thousand Dollars (\$14,000.00), or any other sum, belonging to the Chinese War Relief Association; the sum of Nineteen Hundred Dollars (\$1,900.00), or any other sum, belonging to the Wing Mae School of China; the sum of Fifteen Hundred Dollars (\$1,500.00), or any other sum, belonging to the Chinese School of Phoenix; the sum of Nineteen Hundred Dollars (\$1,900.00), or any other sum, belonging to the Sun Kwung Tong Co.; or the sum of Eight Hundred Dollars (\$800.00), or any other sum, belonging to the Chinese Chamber of Commerce, but on the contrary alleges that all of said monies were seized by the Narcotics agents were the property of Ung Too Thet at the time of said seizure, being in his possession and subject to his personal control and use, and that the parties [19] plaintiff herein have no legal interest whatsoever in said funds.

Further answering said Paragraphs IV, V, VI, VII and VIII, this defendant has no knowledge, information or belief as to the truth of the allegations that the sums set forth, or any other sums, had been paid to the said Ung Too Thet by the organizations therein named for the reasons and under the conditions therein set forth, or for any other reasons or under any other conditions, and therefore denies each and every such allegation and demands that plaintiffs herein be required to make strict proof thereof.

V.

As a further defense and without waiving any defense hereinabove set forth, defendant alleges that the said Ung Too Thet, alias Ong Kok Si, was upon or about the 11th day of October, 1945, engaged in the illicit opium traffic at his regular place of business, 113 East Madison Street, Phoenix, Arizona; that he was at that time arrested by agents of the United States Narcotics Bureau and at the time of said arrest a search was made of his premises, at which time large amounts of raw and prepared smoking opium were discovered, as well as a safe containing some Thirty-five Thousand Dollars (\$35,000.00), in cash, including more than Three Thousand Dollars (\$3,000.00) in marked money belonging to the United States of America, together with checks and securities; that said monies and checks were seized as evidence by the said Narcotics agents along with the opium; that thereafter charges were filed against the said Ung Too Thet accusing him of violation of the Harrison Narcotics Act; that thereafter and on or about the 26th day of January, 1946, the said Ung Too Thet in Cause No. C-7335 Phx., entered a plea of guilty to the charge, whereupon imposition of sentence was suspended for five (5) years by the Court upon the condition that the said Ung Too Thet return to China within thirty (30) days.

That the said Ung Too Thet had failed to make a Federal Income Tax return for the years 1943 and 1944; that thereafter [20] agents of the Collector of Internal Revenue for the District of Arizona, believing that the said Ung Too Thet had received

taxable income during the said two years, after investigation determined that his taxable income for the year 1943 amounted to the sum of Thirteen Thousand Eight Hundred Seventy-eight and 66/100 Dollars (\$13,878.66), or thereabouts; that his net taxable income for the year 1944 amounted to the sum of Thirty-two Thousand Five Hundred Ninety-four and 97/100 Dollars (\$32,594.97); that the total liability on the above mentioned earnings for the two years amounted to Nineteen Thousand Nine Hundred Twenty-two and 67/100 Dollars (\$19,922.67), together with twenty-five per cent (25%) penalty in the sum of Four Thousand Nine Hundred Eighty and 66/100 Dollars (\$980.66) and interest to the 23rd day of October, 1945, in the amount of Nine Hundred Eighty-nine and 77/100 Dollars (\$989.77); that thereafter the defendant, under the authority of Sections 3612 and 3692, Title 26, U.S.C.A., assessed the said unpaid tax liabilities against the said Ung Too Thet and levied upon the monies then remaining in the hands of the said United States Narcotics agents, after the collection by them of the Narcotics Drug Tax on the opium found in the possession of the said Ung Too Thet; that notice of said deficiency assessment was mailed to the said Ung Too Thet by the Commissioner of Internal Revenue on the 29th day of November, 1945; that the determination of said unpaid tax liability, the subsequent deficiency assessment, levy and seizure of the monies in the possession of United States Narcotics agents was legal and proper; and that the said monies were legally the property of

the said Ung Too Thet and subject to such seizure under the laws of the United States.

Whereupon, having fully answered, defendant prays that plaintiff shall take nothing by his complaint; that the same shall be dismissed; that the defendant have his costs herein incurred, and for such other relief as may seem meet and proper in the [21] premises.

FRANK E. FLYNN,

United States Attorney,

District of Arizona.

/s/ CHARLES B. McALISTER,

Assistant U. S. Attorney.

State of Arizona,

County of Maricopa—ss.

Charles B. McAlister, being first duly sworn on oath, deposes and says:

That he has read the foregoing answer, knows the contents thereof, and that the same is true as he verily believes; that he is an assistant to the United States Attorney for the District of Arizona; that he bases his information and belief upon information furnished him by the Bureau of Internal Revenue and the Bureau of Narcotics in the Treasury Department of the United States.

CHARLES B. McALISTER.

Subscribed and sworn to before me this 9th day of Sept., 1946.

[Seal]

GERTRUDE I. BITTING,

Deputy Clerk,

U. S. District Court for the

District of Arizona.

[Endorsed]: Filed Sept. 9, 1946.

In the United States District Court for the
District of Arizona (Phoenix Division)

October, 1946 term at Phoenix

Honorable Dave W. Ling,
United States District Judge, Presiding

[Title of Cause.]

Minute Entry of Friday, Nov. 1, 1946

SETTING CASE FOR TRIAL

James E. Flynn, Esquire, appears as counsel for the plaintiff. Charles B. McAlister, Esquire, appears as counsel for the defendant.

On stipulation of respective counsel,

Is Is Ordered that this case be and it is set for trial Tuesday, January 14, 1947, at ten o'clock a.m., and that this case be consolidated with Civ-918 Phoenix for trial.

In the United States District Court for the
District of Arizona, Phoenix Division

October, 1946 Term at Phoenix

Minute Entry of Tuesday, January 14, 1947

PROCEEDINGS OF TRIAL

Honorable Dave W. Ling, United States District
Judge, Presiding. Honorable Peirson M. Hall,
United States District Judge, Specially Assigned,
Presiding.

Civ-804

HENRY ONG, President of Sun Kwung Tong
Company, an association, et al,

Plaintiffs,

vs.

WILLIAM P. STUART, United States Collector
of Internal Revenue in and for the State of
Arizona,

Defendant.

Civ-918

GEE SOOT HONG, YEE WO & COMPANY,
TOM NOM AND FONG W. YUEY,

Plaintiffs,

vs.

WILLIAM P. STUART, United States Collector
of Internal Revenue in and for the State of
Arizona,

Defendant.

This case comes on regularly for trial this day.
James Flynn, Esquire, appears as counsel for the

plaintiffs. Charles B. McAlister, Esquire, Assistant United States Attorney, appears as counsel for the defendant. Louis L. Billar is present as official court reporter.

Both sides announce ready for trial.

On stipulation of counsel,

It Is Ordered that parties herein be allowed to call certain witnesses at this time, out of order.

Walter Ong is now sworn as Chinese Interpreter herein.

Plaintiffs Case

Gee Soot Hong is now sworn and examined on behalf of the plaintiffs.

Plaintiffs' Exhibit A, check, is now admitted in evidence.

Henry Ong is now sworn and examined on behalf of the plaintiffs.

W. J. Harmon is now sworn and examined for the defendant, out of order.

And thereupon, the further trial of this case is ordered continued to the hour of ten o'clock, a.m., January 15, 1947, to which time the parties and their counsel are excused. [24]

[Title of District Court and Cause.]

Wednesday, January 15, 1947.

The respective parties and their counsel are present and further proceedings of trial are had as follows:

Plaintiffs' Case (Continued)

Plaintiffs' Exhibit B, deposition of Ung Too Thet, is now admitted in evidence.

Walter Ong is now sworn as a witness for the plaintiffs.

Counsel now stipulate as to nature of testimony of plaintiff, Tom Nom, if said plaintiff testified as a witness herein, and stipulate that Ong Goack Si, Ung Too Thet and Ung Kok Si are one and the same person.

Plaintiffs' Exhibit C, check, is now admitted in evidence.

Fred Wong is now sworn and examined on behalf of the plaintiffs.

The following witnesses for the plaintiff are now sworn and examined:

Yee Sing	Henry Gong
Di H. Toy	Yeun Lung
Frank Ong	

And thereupon at the hour of 12:10 o'clock p.m., It Is Ordered that the further trial of this case be continued to the hour of two o'clock p.m., this date, to which time the parties and counsel are excused.

Subsequently, at the hour of two o'clock p.m., the parties and their respective counsel being present pursuant to recess, further proceedings of [25] trial are had as follows:

It Is Ordered that Plaintiffs' Exhibit D, account books, be admitted in evidence.

Plaintiffs rest.

Defendant's Case

The following defendant's witnesses are now sworn and examined: Earl A. Smith, Charles Wrightman, Fred Knapp, Freeman Stone, Kenneth O. N. Wong.

Counsel for the plaintiffs now moves for leave to amend the pleadings to conform with the proof as will fully appear in the reporter's notes, and

It Is Ordered that said motion be and it is granted.

Bennet Y. Brewer is now sworn and examined on behalf of the defendant.

Defendant rests.

Both sides rest.

It Is Ordered that this case be submitted on briefs and by the Court taken under advisement; that the plaintiffs be allowed ten days within which to file an opening brief; that the defendant be allowed ten days thereafter within which to answer and that the plaintiffs be allowed five days thereafter within which to reply.

In the United States District Court for the
District of Arizona, Phoenix Division
October, 1946 Term at Phoenix

Honorable Dave W. Ling,
United States District Judge, Presiding

[Title of Cause.]

Minute Entry of Monday, Feb. 24, 1947

**ORDER THAT PLAINTIFFS HAVE
JUDGMENT**

This case having been submitted and by the Court taken under advisement,

It Is Ordered that plaintiffs have judgment. [27]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Findings of Fact

The above entitled cause came regularly on for trial on the 14th day of January, 1947, before the court sitting without a jury, the Honorable Dave W. Ling, Judge presiding.

The plaintiffs appeared with their attorneys, Jerman & Flynn, James E. Flynn appearing. The defendant appeared by his attorneys, Charles B. McAlister and Frank E. Flynn, Charles B. McAlister appearing. Both sides having announced ready, the court proceeded to try the issues in the cause.

Whereupon the plaintiffs introduced evidence, both oral and documentary, in support of the allegations contained in the plaintiff's complaint and rested. Thereafter the defendant introduced evidence, both oral and documentary, in support of the allegations contained in his answer and rested.

Both sides having rested, the court entered an order [28] taking the matter under advisement, and granted the respective parties leave to file briefs in support of their respective positions with regard to the issues in the cause. All briefs having been filed and the matter having been under advisement, now, after due deliberation, the court finds:

I.

The allegations contained in paragraphs I, II and III of the plaintiffs' complaint are true in substance and in fact.

II.

Fifth Cause of Action

That prior to the 11th day of October, 1945, the Chinese Chamber of Commerce, a corporation, acting through its agents and servants, had delivered to Ung Too Thet, alias Ung Kok Si, as Treasurer of said corporation, at his place of business, 113 East Madison Street, Phoenix, Arizona, the sum of Eight Hundred Thirty-eight and 40/100 (\$838.40) Dollars to be held for and on behalf of said corporation; that the aforesaid money, and the whole thereof, was the property of said corporation, and the said Ung Too Thet, alias Ung Kok Si, was holding the aforesaid fund for and on behalf of said corporation as treasurer.

III.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the Eight Hundred Thirty-eight and 40/100 (\$838.40) Dollars, heretofore delivered to the said Ung Too Thet, as treasurer of the Chinese Chamber

of Commerce, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid Eight Hundred Thirty-eight [29] and 40/100 (\$838.40) Dollars was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof, was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Chinese Chamber of Commerce as treasurer thereof.

IV.

That the said fund, and the whole thereof, is in the possession of the defendant, and the said defendant has refused to deliver said fund, or any part thereof, to the plaintiff Chinese Chamber of Commerce.

V.

Fourth Cause of Action

That prior to the 11th day of October, 1945, the Sun Kwung Tong Company, an association, acting through its agents and servants, had delivered to Ung Too Thet, alias Ung Kok Si, as treasurer of said association, at this place of business, 113 East Madison Street, Phoenix, Arizona, the sum of One Thousand Five Hundred (\$1,500.00) Dollars to be held for and on behalf of said association; that the aforesaid money, and the whole thereof, was the property of said association, and the said Ung Too Thet, alias Ung Kok Si, as said treasurer, in holding the aforesaid fund, was acting as treasurer for and on behalf of said association.

VI.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the One Thousand Five Hundred (\$1,500.00) Dollars, heretofore [30] delivered to the said Ung Too Thet, as treasurer of the Sun Kwung Tong Company, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid One Thousand Five Hundred (\$1,500.00) Dollars was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof, was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Sun Kwung Tong Company as treasurer.

VII.

That the said fund, and the whole thereof, is in the possession of the defendant, and the said defendant has refused to deliver said fund, or any part thereof, to the plaintiff, Sun Kwung Tong Company.

VIII.

Second Cause of Action

That prior to the 11th day of October, 1945, the Wing Mae School in China, an association, acting

through its chairman, Frank Ong, delivered to Ung Too Thet, as treasurer of said association, at his place of business, 113 East Madison Street, Phoenix, Arizona, the sum of One Thousand Nine Hundred Fourteen (\$1,914) Dollars. That said sum was the property of said association and was delivered to the said Ung Too Thet, alias Ung Kok Si, as treasurer thereof, for safe keeping, and to be held by the said Ung Too Thet as treasurer of said association.

IX.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the One Thousand Nine Hundred Fourteen (\$1,914.00) Dollars, heretofore delivered to said Ung Too Thet, as treasurer of the Wing Mae School in China, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid One Thousand Nine Hundred Fourteen (\$1,914.00) Dollars was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safekeeping thereof, and was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Wing Mae School in China as treasurer thereof.

X.

That the said fund, and the whole thereof, is in the possession of the defendant, and the said defendant has refused to deliver said fund, or any part thereof, to the plaintiff, Wing Mae School in China.

XI.

Third Cause of Action

That the Chinese School of Phoenix, Arizona, acting through its chairman, Yeun Lung, delivered to the said Ung Too Thet, alias Ung Kok Si, as treasurer of said association, at his place of business, 113 East Madison Street, Phoenix, Arizona, the sum of One Thousand Five Hundred (\$1,500.00) Dollars to be held by the said Ung Too Thet, alias Ung Kok Si, as said treasurer.

XII.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison [32] Street, Phoenix, Arizona. That during the said arrest, the One Thousand Five Hundred Dollars (\$1,500.00), heretofore delivered to the said Ung Too Thet, as treasurer of the Chinese School of Phoenix, Arizona, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the

aforesaid One Thousand Five Hundred (\$1,500.00) Dollars was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof, was not the owner thereof nor of any part thereof, and was holding the same for and on behalf of the Chinese School of Phoenix, Arizona, as treasurer.

XIII.

That the said fund, and the whole thereof, is in the possession of the defendant, and the said defendant has refused to deliver said fund, or any part thereof, to the plaintiff, Chinese School of Phoenix, Arizona.

XIV.

First Cause of Action

That for a long time prior to the matters herein complained of, the Chinese War Relief Association had been engaged in the solicitation of funds from organizations and individuals. That the said solicitation was conducted for the purpose of securing funds to be used for the benefit of the homeless and destitute residents of the Republic of China. That in the solicitation of said funds various parades, dances and entertaining features of different types had been staged and conducted. That as a result of the aforesaid activities on behalf of said association, the sum of Eleven Thousand Seven Hundred One and $41/100$ (\$11,701.41) Dollars had been collected. That on or before October 11, 1945, the said sum, [33] and the whole thereof, was delivered

to Ung Too Thet, alias Ung Kok Si, as treasurer of said association, at his place of business, 113 East Madison Street, Phoenix, Arizona.

XV.

That on or about the 11th day of October, 1945, the said Ung Too Thet, alias Ung Kok Si, was arrested by United States narcotic agents for violation of the Harrison Narcotic Act and the Import and Export Drug Act at 113 East Madison Street, Phoenix, Arizona. That during the said arrest, the Eleven Thousand Seven Hundred One and 41/100 (\$11,701.41) Dollars, heretofore delivered to the said Ung Too Thet, as treasurer of the Chinese War Relief Association, was seized by the arresting officers and taken from the possession of the said Ung Too Thet, alias Ung Kok Si. That at the time the aforesaid Eleven Thousand Seven Hundred One and 41/100 (\$11,701.41) Dollars was seized by the arresting agents, the said Ung Too Thet, alias Ung Kok Si, had no interest therein other than the safe keeping thereof, was not the owner thereof nor any part thereof, and was holding the same for and on behalf of the Chinese War Relief Association as treasurer thereof.

XVI.

That the said fund, and the whole thereof, is in the possession of the defendant, and the said defendant has refused to deliver said fund, or any part thereof, to the plaintiff, Chinese War Relief Association.

Conclusions of Law

The court, therefore, concludes as a matter of law: [34]

I.

That the plaintiff, Henry Ong, as President of Sun Kwung Tong Company, an association, is entitled to judgment against the defendant in the sum of One Thousand Five Hundred (\$1,500.00) Dollars.

II.

That the plaintiff, Chinese Chamber of Commerce of Phoenix, a corporation, is entitled to judgment against the defendant in the sum of Eight Hundred Thirty-eight and 40/100 (\$838.40) Dollars.

III.

That the plaintiff, Frank Ong, as chairman of the Wing Mae School in China, an association, is entitled to judgment against the defendant in the sum of One Thousand Nine Hundred Fourteen (\$1,914.00) Dollars.

IV.

That the plaintiff, Yeun Lung, chairman of the Chinese School of Phoenix, Arizona, an association, is entitled to judgment against the defendant in the sum of One Thousand Five Hundred (\$1,500.00) Dollars.

V.

That the plaintiff Fred Wong, chairman of the Chinese War Relief Association, an association, is entitled to judgment against the defendant in the sum of Eleven Thousand Seven Hundred One and 41/100 (\$11,701.41) Dollars.

VI.

That judgment be entered herein in conformity herewith.

Done in Open Court this 17th day of March, 1947.

DAVE W. LING,

Judge of the District Court.

[Endorsed]: Filed Feb. 28, 1947. [35]

In the United States District Court for the
District of Arizona, Phoenix Division

The following proceedings were had before the Honorable Dave W. Ling, United States District Judge, in Chambers at Portland, Oregon, on Monday, March 17, 1947:

Minute Entry of Friday, March 21, 1947

APPROVED PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW AND
JUDGMENT

[Title of Cause.]

It Is Ordered that Plaintiffs' Proposed Findings of Fact and Conclusions of Law be approved and adopted as the Findings of Fact and Conclusions

of Law herein and that the Plaintiffs' Proposed Judgment be filed, entered and spread upon the minutes as the judgment in this case as follows:

Civ. 804

HENRY ONG, President of Sun Kwung Tong Company, an association; CHINESE CHAMBER OF COMMERCE OF PHOENIX, a corporation; FRANK ONG, as Chairman of the Wing Mae School in China, an association; YEUN LUNG, Chairman of the Chinese School of Phoenix, Arizona, an association; and FRED WONG, Chairman of the Chinese War Relief Association, an association,
Plaintiffs,

vs.

WILLIAM P. STUART, United States Collector of Internal Revenue in and for the State of Arizona,
Defendant.

JUDGMENT

The above entitled cause came regularly on for trial on the 14th day of January, 1947, before the court sitting without a jury, the Honorable Dave W. Ling, Judge, presiding.

The plaintiffs appeared with their attorneys, Jer-man & Flynn, James E. Flynn, appearing. The defendant appeared by his attorneys, Charles B. McAlister and Frank E. Flynn, Charles B. McAlister, appearing. Both sides announce ready; the court proceeded to try the issues in the matter.

At the conclusion of the said trial, the cause was taken under advisement. Thereafter appropriate findings of fact and conclusions of law were duly settled and filed herein.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the plaintiff, Henry Ong, as President of Sun Kwung Tong Company, an association, do have and recover judgment of and from the defendant in the sum of One Thousand Five Hundred (\$1,500.00) Dollars.

It Is Further Ordered, Adjudged and Decreed that the plaintiff, Chinese Chamber of Commerce of Phoenix, Arizona, a corporation, do have and recover judgment of and from the defendant in the sum of Eight Hundred Thirty-eight and 40/100 (\$838.40) Dollars.

It Is Further Ordered, Adjudged and Decreed that the plaintiff, Frank Ong, as chairman of the Wing Mae School in China, an association, do have and recover judgment of and from the defendant in the sum of One Thousand Nine Hundred Fourteen (\$1,914.00) Dollars.

It Is Further Ordered, Adjudged and Decreed that the plaintiff, Yeun Lung, Chairman of the Chinese School of Phoenix, Arizona, an association, do have and recover judgment of and from the defendant in the sum of One Thousand Five Hundred Dollars (\$1,500.00).

It Is Further Ordered, Adjudged and Decreed that the plaintiff, Fred Wong, Chairman of the Chinese War Relief Association, an association, do have and recover judgment of and from the de-

fendant in the sum of Eleven Thousand Seven Hundred One and 41/100 (\$11,701.41) Dollars.

Done in Open Court this 17th day of March, 1947.

DAVE W. LING,

Judge of the District Court.

Approved as to form only:

FRANK E. FLYNN,

United States Attorney,

District of Arizona.

CHARLES B. McALISTER,

Assistant United States

Attorney,

Attorneys for Defendant.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes Now the defendant and moves this Court that the judgment heretofore made and entered herein be vacated and set aside, and that a new trial be granted the defendant upon the following grounds, to-wit:

I.

That the judgment is not supported nor justified by the evidence.

II.

That the judgment is contrary to law.

III.

That the Court erred in making its finding that the money in the possession of the defendant was the property of the plaintiffs herein.

IV.

That the Court erred in concluding that the plaintiffs, particularly the plaintiff Henry Ong, as president of the Sun Kwong Tong Company and the plaintiff Chinese Chamber of Commerce, a corporation, were entitled to the sums awarded them, or to any sums whatsoever.

Respectfully submitted,

FRANK E. FLYNN,

United States Attorney,

/s/ CHARLES B. McALISTER,

Assistant U. S. Attorney,

Attorneys for Defendant.

In the District Court of the United States
for the District of Arizona
Nos. Civ. 804 and 918 Phx.

HENRY ONG, et al., and

GEE SOOT HONG, et al.,

Plaintiffs,

vs.

WILLIAM P. STUART, etc.,

Defendant.

MEMORANDUM IN SUPPORT OF
MOTION FOR NEW TRIAL

In order to sustain its finding for the plaintiffs, the court must necessarily have determined that the money in the possession of the defendant was the subject of a trust either specific or constructive. The only evidence in support of this theory was

the testimony of Ong Kok Si, who, in a deposition, stated on direct examination that all the funds were put in trust with him by the parties-plaintiff and that he had kept the same funds in his safe ever since they were delivered to him; but who stated on cross-examination that he kept a lot of cash on hand so that he could cash checks for various people, acting as a banker, and that he did not segregate his money from the money of the various plaintiffs.

In addition there was undisputed testimony that more than \$3,000 in marked bills appeared throughout the bundles of money which were seized by the Customs Agents at the time of Ong Kok Si's arrest, this money having previously been used by the Customs Agents to make purchases of opium from Kok Si and his agents.

Insofar as the claim of the Sun Kwong Tong Co. is concerned, there was testimony by Henry Ong, its president, that the original \$1900 paid into the company by the various partners had been used to buy a stock of goods early in the history of the company, and that the money and stock had been turned over many times. There was further testimony that for a period of more than 15 years Ong Kok Si had [39] conducted the business as he saw fit without making any accounting to the alleged partners or without any complaints having been made by them.

As to the funds claimed to belong to the Chinese Chamber of Commerce, Kok Si testified that the money had been turned over to him a long time ago and he did not know the exact amount, but it

was whatever the books showed. The books which were introduced in evidence showed that the last entry had been made in 1939 and the amount it showed there to the credit of the Chinese Chamber of Commerce was the amount claimed by plaintiffs, although there was direct evidence that a bank account in a larger amount had been opened by the Chamber of Commerce subsequent to that time.

The burden of proof rested on the plaintiffs, and since the action is equitable in nature, seeking to impress a trust on funds in the hands of a third party, this required clear and convincing evidence, not a mere preponderance.

Since the only evidence pointing to a trust insofar as these monies were concerned was that of Kok Si, and that somewhat contradictory, it seems to defendant that plaintiffs have failed to sustain the burden. While the evidence of Kok Si, an admitted felon, was admissible, it certainly is not entitled to much weight, particularly since he had a definite interest in shifting his indebtedness to the plaintiffs, from his shoulders to the government's.

Respectfully submitted,

FRANK E. FLYNN,

United States Attorney.

/s/ CHARLES B. McALISTER,

Assistant U. S. Attorney,

Attorneys for Defendant.

Received copy this 31st day of March, 1947.

JERMAN & FLYNN,

Attorney for Plaintiffs, ad.

[Endorsed]: Filed March 31, 1947. [40]

[Title of District Court and Cause.]

CERTIFICATE OF PROBABLE CAUSE

This Court having entered its judgment on or about the 21st day of March, 1947, ordering the defendant William P. Stuart, United States Collector of Internal Revenue of the District of Arizona, to pay to the plaintiffs above named the sum of \$17,453.81, which sum had been seized by the said defendant as the property of one Ung Too Thet, alias Ong Kok Si, under an assessment and levy for unpaid taxes; and the Court having determined that the said sum of money belonged to the plaintiffs herein rather than to Ung Too Thet, alias Ong Kok Si; and it appearing that said seizure was made under the direction of the Commissioner of Internal Revenue and with probable cause, and it further appearing that the said defendant may be personally liable for the payment of said judgment, the Court finds:

That the defendant, William P. Stuart, as United States Collector of Internal Revenue for the District of Arizona, acted under the direction of the Commissioner of Internal Revenue and upon probable cause in the collection of said taxes and that a certificate of probable cause should therefore be granted. [41]

It Is Therefore Ordered that a certificate of probable cause be, and the same is hereby issued and entered in the above entitled cause and that the said William P. Stuart, Collector of Internal Revenue for the District of Arizona is hereby ordered

released from payment of said judgment, and said judgment is ordered paid out of the proper appropriation from the United States Treasury.

Done in Open Court this 8th day of May, 1947.

DAVE W. LING,
Judge.

[Endorsed]: Filed May 8, 1947. [42]

In the United States District Court for the
District of Arizona, Phoenix Division

April 1947 Term at Phoenix

Honorable Dave W. Ling,
District Judge, Presiding

[Title of Cause.]

Minute Entry of Friday, May 23, 1947,

ON MOTION FOR NEW TRIAL

Defendant's motion for new trial having been heretofore submitted,

It Is Ordered that said motion be and it is granted as to the fourth cause of action and denied as to all remaining causes of action. [43]

[Title of District Court and Cause.]

MOTION TO DISMISS FOR LACK OF
JURISDICTION

Comes Now the defendant and moves this Court for an order vacating and setting aside the judgment heretofore entered in this matter and dismissing the complaint on file herein, on the ground that the Court has no jurisdiction of the subject matter of this litigation for the reasons and because of the facts hereinafter set forth.

1. An action against the Collector of Internal Revenue for the refund of an illegally, improperly or wrongfully collected tax must be filed in accordance with the provisions of paragraphs 3770 and 3772 of Title 26, U.S.C., which provide for the filing of a claim for refund with the Commissioner of Internal Revenue, to be followed by a waiting period of six months, before suit is filed, unless this procedure is followed no jurisdiction can be conferred on the District Court.

2. According to the affidavit hereto attached and made a part of this motion, the Collector received the monies in question from Federal Narcotic Agents and paid them into the U. S. Treasury, crediting the amount against the outstanding tax assessments of one Ong Kok Si, alias Ung Too Thet, several months before this suit was commenced. It further appears that no claim for refund was ever filed by the plaintiffs, or any of them, with the United States Commissioner of Internal Revenue. [44]

3. The District Court would have no jurisdiction of the action against the Collector on any other basis, as there is no diversity of citizenship, and since this is not a case arising under the laws of the United States (other paragraphs 3770-3772) within the meaning of Par. 41(1)(5)(20) of Title 28 U.S.C.

Respectfully submitted,

FRANK E. FLYNN,

United States Attorney,

/s/ CHARLES B. McALISTER,

Assistant U. S. Attorney.

[Title of District Court and Cause.]

AFFIDAVIT

State of Arizona,

County of Maricopa—ss.

William P. Stuart, being first duly sworn, upon oath deposes and says:

That he is the legally appointed and acting Collector of Internal Revenue for the District of Arizona and has been such ever since the 1st day of March, 1937, or thereabouts; that as such Collector he received from Narcotic Agents of the United States the sum of \$20,915.02 on or about the 23rd day of October, 1945, which the said Narcotic Agents reported had been seized from one Ong Kok Si, alias Ung Too Thet at the time of his arrest for violation of the United States Narcotic laws; that

a delinquent assessment had theretofore been made against the said taxpayer for unpaid 1943 and 1944 income taxes in the total amount, including interest and penalties of \$25,893.11; that on or about the 30th day of October, 1945, the said sum of \$20,-915.02 was covered into a Treasury Account and applied against the unpaid income taxes of the said Ong Kok Si; that ever since the said 30th day of October, 1945, the said sum of money has been in the legal possession of the Treasury of the United States of America and not in the possession or control of your affiant.

That while a demand was made by the plaintiffs herein through their attorneys on the Collector for the return of the said monies, [46] which it was claimed had been illegally seized, no claim for refund against the United States has ever been filed with affiant or with the Commissioner of Internal Revenue in accordance with the requirements of Sections 3770 and 3772 of Title 28, U. S. Code.

WILLIAM P. STUART.

Subscribed and sworn to before me, a Notary Public, this 23rd day of May, 1947.

HELEN B. HAWORTH,
Notary Public.

My commission expires April 24, 1949.

Copy received this 26th day of May, 1947.

JERMAN & FLYNN,

Attorneys for Plaintiffs, ad.

[Endorsed]: Filed May 26, 1947. [47]

In the United States District Court for the
District of Arizona, Phoenix Division

April 1947 Term at Phoenix

Honorable Dave W. Ling,
United States District Judge, Presiding

[Title of Cause.]

Minute Entry of Monday, May 26, 1947, Amending
Findings of Fact; Denying Motion for Lack of
Jurisdiction

No appearance is made on behalf of the plaintiffs. Charles B. McAlister, Esquire, Assistant United States Attorney, appears for the defendant and now states that respective counsel have stipulated that the numbers of the causes of action as shown on the Findings of Fact herein may be amended to conform to the causes of action as set out in the complaint and it is ordered that the Clerk amend said Findings of Fact accordingly, by interlineation,

It Is Further Ordered that the Defendant's Motion to Dismiss for Lack of Jurisdiction, filed herein this date, be and it is denied.

Counsel for the defendant now states that counsel for the plaintiffs has requested that the Fourth Cause of Action of the Complaint herein be dismissed without prejudice, and

It Is Ordered that said Fourth Cause of Action be and it is dismissed with prejudice. [48]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that William P. Stuart, United States Collector of Internal Revenue in and for the State of Arizona, defendant in the above entitled and numbered cause, appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the trial court made and entered on the 23rd day of May, 1947, wherein defendant's motion for a new trial was denied as to the first, second, third and fifth causes of action; and from the final judgment of the District Court wherein plaintiffs were awarded the sum of \$15,-953.81, and from the order of the District Court made and entered on the 26th day of May, 1947, wherein defendant's motion to dismiss for lack of jurisdiction was denied.

FRANK E. FLYNN,

United States Attorney,

/s/ CHARLES B. McALISTER,

Assistant U. S. Attorney,

Attorneys for Defendant.

[Endorsed]: Filed Aug. 7, 1947. [49]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The defendant designates the following portions of the record in the above entitled and numbered cause to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as the record of appeal in the above entitled cause:

1. Complaint.
2. Answer.
3. Findings of Fact and Conclusions of Law.
4. Original judgment.
5. Defendant's Motion for a New Trial.
6. Defendant's Motion to Dismiss for Lack of Jurisdiction.
7. Affidavit of Defendant in Support of Motion to Dismiss for Lack of Jurisdiction.
8. Certificate of Probable Cause.
9. Reporter's Transcript.
10. Plaintiffs' Exhibit "B" (Deposition of Ong Kok Si).
11. All Minute (Docket) Entries.
12. Notice of Appeal.
13. This Designation.

FRANK E. FLYNN,
United States Attorney,
/s/ CHARLES B. McALISTER,
Assistant U. S. Attorney,
Attorneys for Defendant.

Copy received this 7th day of August, 1947.

JERMAN & FLYNN,
By JAMES E. FLYNN,
Attorneys for Plaintiffs, ad.

[Endorsed]: Filed Aug. 7, 1947. [50]

[Title of District Court and Cause.]

ORDER

It Is Ordered that the clerk of this court transmit to the United States Circuit Court of Appeals for the Ninth Circuit as a part of the record on appeal herein, the original of Plaintiff's exhibit "B", to-wit: the Deposition of Ong Kok Si, pursuant to Rule 75(i) of the Federal Rules of Civil Procedure, together with the duplicate of the reporter's transcript as provided in Rule 75(b).

Dated this 25th day of August, 1947.

DAVE W. LING,
United States District Judge.

[Endorsed]: Filed Aug. 26, 1947. [51]



[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
ON BY DEFENDANT ON APPEAL

The defendant having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment order made and entered herein on May 23, 1947, by the District Court of the United States for the District of Arizona and from the order of the District Court made and entered on May 26, 1947, denying defendant's motion to dismiss for lack of jurisdiction, hereby

designates the following points to be relied on in the prosecution of said appeal:

The District Court erred:

I.

In concluding that plaintiffs were entitled to recover from the defendant the aggregate sum of \$15,953.81, representing a portion of the amount seized by the defendant as the property of one Ung Too Thet, alias Ong Kok Si, to satisfy an assessment and levy for unpaid taxes.

II.

In failing to conclude that the defendant was entitled to judgment dismissing the complaint filed herein.

III.

In finding that the defendant had in his possession the above referred to sum of \$15,953.81, which was ordered to be paid to plaintiffs herein. [52]

IV.

In failing to make a finding that the defendant did not have in his possession the above referred to sum of \$15,953.81.

V.

In denying the defendant's motion to vacate and set aside the judgment entered herein.

VI.

In denying the defendant's motion to dismiss for lack of jurisdiction, for the reason that the District

Court was without jurisdiction of the subject matter of the complaint filed herein, since plaintiffs had not filed claims for refund as required by Section 3772 of the Internal Revenue Code.

VII.

In denying the defendant's motion to dismiss for lack of jurisdiction, for the reason that the District Court was without jurisdiction over this defendant or over the fund which was ordered to be paid by him to plaintiffs, since said fund, representing a portion of the amount seized from the taxpayer as aforementioned, was not in the possession of or under the control of the defendant, said fund having been covered into the Treasury of the United States prior to the institution of this proceeding, pursuant to the provisions of Section 3971 of the Internal Revenue Code.

Dated this 26th day of August, 1947.

FRANK E. FLYNN,

United States Attorney,

Attorney for Defendant.

By E. R. THURMAN,

Assistant U. S. Attorney..

Received copy of the within Statement of Points to Be Relied on by Defendant on Appeal, this 26th day of August, 1947.

JERMAN & FLYNN,

By JAMES E. FLYNN,

Attorneys for Plaintiffs.

[Endorsed]: Filed Aug. 26, 1947. [53]

In the United States District Court for the
 District of Arizona, Phoenix Division
 April 1947 Term at Phoenix

Honorable Dave W. Ling,
 United States District Judge, presiding

[Title of Cause.]

Minute Entry of Wednesday, Sept. 19¹⁰, 1947.

EXTENDING TIME TO FILE RECORD
 AND DOCKET ACTION

It Is Ordered that the appellant's time for filing the record on appeal and docketing the action in the United States Circuit Court of Appeals for the Ninth Circuit be and it is extended to and including November 5, 1947. [54]

In the United States District Court
 for the District of Arizona

CLERK'S CERTIFICATE TO TRANSCRIPT
 OF RECORD

United States of America,
 District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Henry Ong, President of Sun Kwung Tong Company, an association, et al., Plaintiffs, vs. William P. Stuart, United States Collector of Internal Rev-

enue, Defendant, numbered Civil 804 Phoenix, on the docket of said Court.

I further certify that the attached pages numbered 1 to 54, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Designation filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the duplicate of the Reporter's Transcript, and the original of Plaintiffs' exhibit B are transmitted herewith pursuant to order of the Court, and made a part of this record on appeal.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$22.00 and that a memorandum of said sum has been entered in said cause by me for services rendered on behalf of the United States.

Witness my hand and the seal of said Court this 24th day of October, 1947.

[Seal] /s/ WM. H. LOVELESS,
Clerk. [55]

In the District Court of the United States
for the District of Arizona
No. Civ. 804 Phx.

HENRY ONG, et al.,

Plaintiffs,

vs.

WILLIAM P. STUART, United States Collector
of Internal Revenue in and for the State of
Arizona,

Defendant.

No. Civ. 918 Phx.

GEE SOOT HONG, YEE WO & COMPANY,
TOM NOM and FONG W. YUEY,

Plaintiffs,

vs.

WILLIAM P. STUART, United States Collector
of Internal Revenue in and for the State of
Arizona,

Defendant.

REPORTER'S TRANSCRIPT

Appearances:

For the Plaintiffs: Mr. James E. Flynn.

For the Defendant: Mr. Charles B. McAlister,
Assistant United States Attorney.

Phoenix, Arizona, January 14-15, 1947

The above entitled and numbered causes came on
duly and regularly to be heard in the above entitled

court before Hon. Dave W. Ling, Judge, presiding without a jury, commencing at the hour of 1:00 p.m., on the 14th day of January, 1947.

The plaintiffs were represented by their attorney Mr. James E. Flynn, of Messrs. Jerman & Flynn, attorneys at law.

The defendant was represented by Mr. Charles B. McAlister, Assistant United States Attorney.

The following proceedings were had:

The Clerk: Civil 804, Phoenix, Henry Ong, et al., plaintiffs, versus William P. Stuart, United States Collector of Internal Revenue in and for the State of Arizona, defendant, and Civil 918, Phoenix, Gee Soot Hong, Yee Wo & Company, Tom Nom and Fong W. Yuey, plaintiffs, versus William P. Stuart, United States Collector of Internal Revenue in and for the State of Arizona, defendant, for trial.

Mr. Flynn: The plaintiffs are ready.

Mr. McAlister: The Government is ready.

The Court: All right. Now, what witnesses did you want to put on, put them on out of order?

Mr. Flynn: I'd like to put on Gee Soot Hong and Henry Ong, if the Court please.

The Court: All right.

Mr. Flynn: I think, if the Court will permit me, I'd like to have the Interpreter sworn and examine this witness through an Interpreter. He understands some English, but I am afraid he might get confused. I have Walter Ong, if it is agreeable to the Government.

Mr. McAlister: It is agreeable with me personally, but the only objection I can see is that Walter signed [2*] the complaint as agent for the plaintiffs in one of the cases, and I don't know whether I could conscientiously allow him to act as Interpreter. My personal opinion is it would be perfectly all right.

Mr. Flynn: So far as that is concerned, if the Court pleases, that was one of the reasons we used Mr. Ong to make the affidavits for and on behalf of the plaintiffs in this action, because he interpreted it to them and probably they didn't understand all of the phraseology, and so forth, in it, and consequently, we used Mr. Ong to sign the affidavits for and on behalf of the plaintiffs. As a matter of fact, I doubt seriously whether the affidavit was necessary on the complaints under the present rules of procedure in court, but we used it as a matter of precaution to put the affidavits on there.

The Court: Oh, I think I will permit him to be sworn.

Mr. Flynn: Very well, be sworn.

(Walter Ong was duly sworn to act as Interpreter.)

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

GEE SOOT HONG

a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Flynn:

Q. Will you state your name, please? [3]

A. Gee Soot Hong.

Q. Where do you live, Mr. Hong?

A. 850 Grand Avenue.

Q. Grand Avenue where?

A. San Francisco.

Q. 850 Grand Avenue, San Francisco, California?
A. Yes.

Q. What business are you in there in San Francisco, Mr. Hong?

A. Chinese import and export business.

Q. Were you acquainted with Kok Si, alias Ung Kok Si, Ung Too Thet, here in Phoenix?

A. Yes.

Q. How long have you known him?

A. About one year.

Q. Were you interested in 1945—prior to the 11th or 7th day of August, were you interested in the purchase of some real property located in Phoenix, Arizona?
A. Yes.

Q. And what did that real property consist of, if you know?

A. It is a piece of property on Second Street and Jefferson, across the alley from the Golden Dragon Cafe there. It is a lot 75 feet wide and 125 feet long.

(Testimony of Gee Soot Hong.)

Q. Ask him whether he knows whether or not that would be Lots 1, 2 and 3 in Block 34, in the City of [4] Phoenix? A. Yes.

Q. Did you send some money to Kok Si for the purchase of that property? A. Yes.

Q. How much money did you send?

A. \$2,500.

Q. How did you send that money?

A. I purchased a Cashier's check from the Bank of Canton in San Francisco and sent it on to him.

Q. Do you recall the date, or the approximate date, that you sent the money to Kok Si?

A. It was around August, 1945. I don't know the exact date.

Q. That \$2500 Cashier's check was sent to Kok Si for the purchase of this property that you have described, is that correct? A. Yes.

Q. Do you know what happened to that Cashier's check?

A. I know that it was taken by some officers.

Q. Do you know where that Cashier's check is now? A. The officers took it.

Q. Do you know what officers took the check?

A. No.

Q. Were the proceeds of the check used for the purchase of the property as you had intended?

A. No.

Mr. Flynn: At this time, if the Court please, I'd like to ask counsel for the Government to produce the check drawn on the Bank of Canton at

(Testimony of Gee Soot Hong.)

San Francisco, being No. 13459, in the sum of \$2500, payable to the order of Ung Kok Si.

Mr. McAlister: We have no objection.

Mr. Flynn: I understand the Government has no objection, and for the purpose of keeping the record straight, I'd like to offer this as Plaintiffs' Exhibit A in evidence.

(Thereupon the document was marked as Plaintiffs' Exhibit A in evidence.)

Mr. Flynn: Your Honor please, this testimony is being presented here a little out of order, but it is admitted in the pleadings that the check was seized by the agents as alleged there on the 11th day of October, by the narcotic agents who made the arrest of Kok Si, and they admit the possession of the check. I hand you Plaintiffs' Exhibit A in evidence and ask you if you can tell me what that is, Mr. Hong.

A. This is the check I sent to Kok Si.

Q. As far as you know, that check has been in the hands of the Government agents since the 7th or the 11th of October, when it was seized by the arresting [6] officers, is that right? A. Yes.

Q. Did Kok Si, or Ung Kok Si, have any interest in this check? A. No.

Q. Did he have any interest in any part of the check? A. No.

Q. Your testimony is, then, that you sent this check to Kok Si to be used for the purchase of this property? A. Yes.

(Testimony of Gee Soot Hong.)

Q. After this check was seized by the Government agents did you inquire at the Bank of Canton in San Francisco about the check?

A. Yes, I went and inquired about it and they told me it was stopped payment.

Q. Stopped payment. Have you received from Kok Si or any other person any portion of this \$2500 check? A. No.

Q. And this is your money, is it, Mr. Hong, represented by Plaintiffs' Exhibit A in evidence?

A. Yes.

Mr. Flynn: That is all.

Cross-Examination

By Mr. McAlister:

Q. How long have you known Kok Si? [7]

A. About a year.

Q. Where did you first meet him?

A. Met him here in Phoenix.

Q. When you say about a year, you mean about a year back from the year, the time he was arrested? A. Yes.

Q. Which is that?

A. He meant that it was prior to the time Kok Si was arrested, about a year before that.

Q. Was that the first dealings you had with Kok Si? A. Yes.

Q. Now, you stated that yourself and one or two others were going to buy this property and you sent the money to Kok Si to purchase it? A. Yes.

Q. Who else was involved in the deal with you?

(Testimony of Gee Soot Hong.)

A. All I know is, there was one more, Thomas Nom.

Q. Did he send down some money too?

A. Yes.

Q. At the same time you did?

A. Same time.

Q. Now, do you remember exactly when that was sent?

A. I don't know exactly, but I think it was around August 7th or 8th, 1945.

Q. Who was buying this property that you had in mind? [8]

A. Outside of Thomas Nom from San Francisco, and myself, I don't know who else. There was some local people.

Q. You don't know whether Kok Si was interested in it or not? A. No, I don't.

Q. Did you have the property in mind before you sent the money down? A. Yes.

Q. Did you know how much it would cost approximately?

A. Approximately \$17,500, or \$18,000.

Q. That is, you knew that before you sent the money down? A. Yes.

Q. Now, who was going to use the property?

A. 30 feet by 75 feet of that property was going to be sold back to the Sue Ying Benevolent Association, and the balance of it was to be developed by the interested parties.

Q. That is, you and Tom Nom and the local parties were going to develop the rest of it in some local business or something? A. Yes.

(Testimony of Gee Soot Hong.)

Q. Kok Si was not a part of that group?

A. I don't know.

Q. You don't know, and you never sent any other money [9] to Kok Si? A. No.

Q. Did you belong to the same Benevolent Association? A. Yes.

Q. This property that you were buying for the Association, you had more property than the Association needed? A. Yes.

Q. Do you know whether or not that property was ever purchased—

Mr. Flynn: That is objected to, if the Court please. It would be immaterial to the issues in this case.

The Court: He may answer. Was the property ever purchased?

A. I understand that it is already purchased.

Q. (By Mr. McAlister): They didn't ask you to put up any more money for it? A. No.

Q. And Kok Si never paid you or offer to repay you the money that had been seized for the tax?

A. No.

Mr. McAlister: I think that is all.

Mr. Flynn: That is all.

(The witness was excused.)

Mr. Flynn: Your Honor please, this witness is from San Francisco, and I'd like to ask that he be excused [10] so he may return to San Francisco. Do you have any objection?

Mr. McAlister: No objection.

Mr. Flynn: Call Henry Ong.

HENRY ONG

was called as a witness on behalf of the plaintiffs, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Flynn:

Q. Will you state your name, please?

A. Henry Ong.

Q. Where do you live, Mr. Ong?

A. 2005 East McDowell.

Mr. McAlister: I think this witness speaks English all right.

Mr. Flynn: Does he speak English?

The Interpreter: He says he understands a part and don't understand a part.

Q. (By Mr. Flynn): What business are you in, Mr. Ong?

A. Not doing anything now.

Q. How long have you lived in Phoenix?

A. Over 30 years—approximately 36 years.

Q. Are you the President of the Sun Kwung Tong Company? A. Yes.

Q. How long have you been acting as President of [11] that Company.

A. Ever since the Sun Kwung Tong Company was formed, up until now.

Q. When was it formed?

A. Approximately 1923 or '24.

Q. And you have been President since the date it was formed?

A. Yes. It has never been changed.

(Testimony of Henry Ong.)

Q. Are you still the acting President?

A. Yes.

Q. Is that an association or a corporation, do you know? A. It is just an association.

Q. And what business is the association engaged in?

A. Buying and selling Chinese merchandise.

Q. Where is it located, the place of business?

A. 113 East Madison.

Q. Are you acquainted with Kok Si?

A. Yes.

Q. How long have you known him?

A. About three or four months before the Sun Kwung Tong Company was formed. I have known him since.

Q. In the year 1945, was Kok Si Treasurer of the Sun Kwung Tong Company? A. Yes.

Q. How long has he been Treasurer of that Company? [12]

A. He has been Treasurer ever since the Company was formed.

Q. Do you know of your own knowledge whether Kok Si had any money belonging to the Sun Kwung Tong Company in his possession on the night of October 11, 1945, when he was arrested by the Narcotic Agents?

A. All of the Sun Kwung Tong Company's money was in his possession.

Q. Do you know how much he was holding at that time for the Sun Kwung Tong Company?

A. Approximately \$1900.

(Testimony of Henry Ong.)

Q. When this Sun Kwung Tong Company was formed, will you tell us who put the money into the association and how much original capital they started with, if you know?

A. There was approximately \$1900.

Q. Where did that \$1900 come from when the Company was first organized?

A. It was a hundred dollars a share, and different Chinese parties bought shares of the Company, which amounted to \$1900.

Q. Was that \$1900, as far as you know, used as operating capital, or was that your original investment which was held in reserve?

A. This was always used to be kept in reserve.

Q. And that is the \$1900 that you referred to that Kok Si had in his possession on the night he was arrested? [13]

A. Yes.

Q. Do you know what happened to that \$1900, Henry?

A. The Government officers, I understand, went and took it.

Q. You weren't present when the arrest was made?

A. No, I was not present.

Q. It is your understanding that that money was seized by the Government?

A. I understand all of Kok Si's money was taken and that money was included in it.

Q. Have you ever received any of that \$1900 back?

A. No.

Q. As far as you know, the money is still in the possession of the Government, is that correct?

A. Yes.

(Testimony of Henry Ong.)

Q. Now, out of that \$1900, do you know, Henry, of your own knowledge, how much of that or how many shares of stock belonged to Kok Si as his own personal property? A. He had four shares.

Q. Were those hundred dollar shares, as far as you know, Henry? A. Yes.

Q. That would be \$400 of that \$1900 that belonged then to Kok Si personally? A. Yes.

Q. Do you know whether or not Kok Si kept books as [14] Treasurer of the Sun Kwung Tong Company?

A. In the beginning he did, used to keep good records, but after several years, then he was pretty neglectful in keeping them.

Q. Where is the place of business of the Sun Kwung Tong Company located?

A. 113 East Madison.

Q. And I believe you testified that the Company was engaged in merchandising of Chinese merchandise, is that correct? A. Yes.

Mr. Flynn: I believe that is all.

Cross-Examination

By Mr. McAlister:

Q. You said this Company was organized to import and sell Chinese merchandise?

A. Not import, just buying Chinese goods from San Francisco, Los Angeles, and sell it to local Chinese people.

Q. Was it a brokerage company; did they maintain a store here, or a warehouse?

A. No, it is just a small Chinese store.

(Testimony of Henry Ong.)

Q. And their regular place of business was on East Madison where Kok Si lived, is that correct?

A. Yes. [15]

Q. Was there any particular type of merchandise sold, issued, or something like that, or what?

A. Chinese eating goods.

Q. And you have been President ever since it was organized?

A. Yes, I was the originator. I was the one that asked everyone to put shares in the Company.

Q. Any other officers besides Kok Si?

A. No, it was a small business, there wasn't any more officers.

Q. Did you ever receive any dividends from the business? A. No.

Q. Never have since it started? A. No.

Q. How often did they hold meetings?

A. Three or four years after it was organized, we would have a yearly meeting every year, but after three or four years I went back to China, and ever since there has never been any meeting.

Q. How long were you back in China?

A. I stayed in China two years.

Q. There have been no meetings since that time?

A. Ever since 1928, I went back to China, there has never been any meetings.

Q. Did Kok Si make any reports to the partners on [16] the business? A. No.

Q. Did you go down to the business headquarters very often?

A. I visited the place in times when I needed Chinese merchandise.

(Testimony of Henry Ong.)

Q. How long since you have been in active business, Mr. Ong?

A. Approximately since October 10th, 1942, when my sons were called to the Service.

Q. You had a store of your own at that time?

A. Yes, I had a store previous to October, 1942.

Q. Now, you said this was not a corporation and an association, it was in the nature of a share partnership, is that right? A. Yes.

Q. And each of you put in a hundred dollars of the original investment? A. Yes.

Q. And you said that was not used in the operation of the business?

A. This original investment was to start the business.

Q. Was that used to buy the first stock of goods, or what?

A. He started his original order and after he sold [17] it, out of the profits they started purchasing more merchandise.

Q. You stated on direct examination that this money was taken by the Government agents at the time of the arrest of Kok Si. Do you know that, or did someone tell you that?

A. Everything in the safe—the Sun Kwung Company money and books were in the safe, so everything that was in the safe was taken, so we presume that the Government had taken the money.

Q. And you base your statement on the fact that everything in the safe was taken, and you think all of the Company's money was in the safe, is that right? A. Yes.

(Testimony of Henry Ong.)

Q. But you don't know that of your own knowledge; that is, you have not been down there and inspected the safe or the books for a long time?

A. Yes.

Q. Do you know whether or not the Company maintained a bank account?

A. From the beginning I helped him open an account, but ever since then, I don't know.

Q. He never told you whether they were keeping the account open or not?

A. No, he never told me.

Q. It is quite possible they might have had accounts [18] in two or three banks, is that true?

A. That I don't know.

Q. Where are the other partners in this Company at the present time?

A. Practically every one is still living here in Phoenix except one or two that passed away.

Q. They didn't join in the suit asking for their money back, is that correct?

A. Because I was the originator of this Company, everybody had been asking me, so I had to, in turn, ask the Government for the money.

Q. Do you recall telling one of the Narcotics Officers that Kok Si had frozen all the rest of you out of the Company?

Mr. Flynn: Just a minute. If the Court please, I take it this is impeachment, and I think the time and place should be fixed.

The Court: Yes, that is correct.

(Testimony of Henry Ong.)

Q. (By Mr. McAlister): Do you recall making that statement to Mr. Earl Smith?

A. I never said that we were frozen out because he had never give us the money back, how could he freeze us out?

Q. What did you tell him, do you recall?

A. Nothing, only that he asked me things in regard to Kok Si and the Sun Kwung Tong Company, and I answered [19] it.

Q. You told him you knew very little about it any more, is that right?

A. Because he had not made any reports, that is true, I told him.

Mr. McAlister: That is all.

Mr. Flynn: That is all.

(The witness was excused.)

Mr. Flynn: Likewise, if the Court please, I'd like to ask that this witness be excused.

The Court: Yes.

Mr. McAlister: We have one witness we would like to put on, your Honor. It will be considerably out of order, but he would like to go on down to Nogales on some work.

Mr. Flynn: May I state at this time, in consideration of the Court, that when the record is made up of this matter, that it be made up in continuity. [20]

10:00 o'Clock A.M., January 15, 1947

Pursuant to adjournment on January 14th, the trial, with all parties as noted in the Clerk's record being present, was continued as follows:

Mr. Flynn: Your Honor please, in Civil 918 and Civil 804, the two cases on file before the Court, at various times reference will be made to Kok Si, and I'd like the record to show at this time that Ong Kok Si, spelled O-n-g K-o-k S-i, and Ung Too Thet and Ung Kok Si, spelled U-n-g K-o-k S-i are one and the same person. Will you so stipulate?

Mr. McAlister: Yes. I think there is probably another alias, Mr. Flynn.

Mr. Flynn: Well, if there is, that is one and the same person.

Mr. McAlister: We will stipulate to that.

Mr. Flynn: At this time, if the Court please, I'd like to introduce into evidence the deposition of Kok Si that was taken pursuant to Rule 27 of the Rules of Civil Procedure, on the 25th day of February, 1946, pursuant to an order made on a petition presented in this Court with notice of taking deposition, and an order authorizing the taking of the deposition which appears of record in this case. [21]

(Thereupon the document was marked as Plaintiffs' Exhibit B in evidence.)

Mr. McAlister: For the purpose of the record at this time we have no objection to its introduction, but we would like to object to the statements in there, wherein Kok Si has stated that certain

moneys were given to him in trust. In fact, that is a conclusion on his part and entirely self-serving.

Mr. Flynn: I think, if the Court please, that we stipulated somewhere in the taking of the deposition that objections relative to the testimony will be saved until the trial by either Mr. McAlister and myself, that the making of objections at that time will be waived, and that we could make objections to each question and answer, and that the Court can rule on it at that time. I think that is the usual procedure, if I am not mistaken.

The Court: All right.

(Counsel then prepares to read the deposition into evidence.)

The Court: Why can't the Court read that and save this time? I will have to read it anyway.

Mr. McAlister: That is what I was wondering and that is why I made this blanket objection.

The Court: And the mere fact that you object would not save the Court from reading it. [22]

Mr. McAlister: No.

Mr. Flynn: It wouldn't take too long.

The Court: What advantage would there be? I will probably read it again.

Mr. Flynn: Very well. If the Court desires it that way, we will proceed.

The Court: Yes.

Mr. Flynn: That is Plaintiffs' Exhibit C in evidence?

The Clerk: Yes.

Mr. Flynn: With reference to the second cause of action in Civil 918, I think it can be stipulated at this time between counsel for the Government and counsel for the plaintiffs, that if Tom Nom, a plaintiff in that action, and suing on the second cause of action, were present, that he would testify as follows:

“The reason for his absence is that he is not physically able to be present.”

Prior to the trial I called Mr. Nom on the phone and advised him that it would be necessary for him to be here at the trial to testify, and also read him a letter. He advised me in a telephone conversation that he was suffering from a rather severe heart condition, and had been practically in an invalid state for the last six months, and he was apprehensive that if he made the trip to Phoenix to testify in this case, it would perhaps be rather disastrous as far as his health [23] is concerned. Consequently, I contacted Mr. McAlister, the attorney for the defendant, and I believe he will stipulate that if Mr. Nom were present this morning that he will testify as follows: “That on or about the 2nd day of August, 1945, he, the Tom Nom, sent a check in the sum of \$2500, payable to the order of the Sun Kwung Tong Company to Ong Too Thet, alias Ong Kok Si, as Treasurer of the Sun Kwung Tong Company, at his place of business at 113 East Madison Street, Phoenix, Arizona, that the check was No. 500, drawn on the Bank of Canton, San Francisco, California, and I believe dated

some time prior to August 2nd, 1945; that the proceeds of the check \$2500, and the whole thereof, were to be used by the said Kok Si, to be applied on the purchase price of Lots 1, 2, and 3, Block 34, in the City of Phoenix; that the said Kok Si had no interest in the check personally; that he was not the owner of any of the proceeds of the check, but was holding the same for the purpose of purchasing that property which I have described."

It is admitted in the pleadings that that will be what he will testify to, is that correct, Mr. McAlister?

Mr. McAlister: That is correct. We will stipulate he would so testify.

Mr. Flynn: May I have the check? At this time, if the Court please, we would like to introduce the check [24] that I have referred to, the \$2500 check dated August 2nd, 1945, payable to the order of the Sun Kwung Tong Company, and signed Tom Nom and Fong W. Yuey, the title "Yee Wo & Company," and drawn on the Bank of Canton, San Francisco, California, as Plaintiffs' C in evidence.

(Thereupon the document was marked as Plaintiffs' Exhibit C in evidence.)

Mr. Flynn: Fred Wong.

FRED WONG

was called as a witness on behalf of the plaintiffs and being first duly sworn, testified as follows:

Direct Examination

By Mr. Flynn:

Q. Do you understand English?

A. Yes, I know some of it.

Q. Would you prefer that these questions and answers be interpreted by Mr. Ong, or do you think you can understand them?

A. Well, I think maybe better Mr. Ong can interpret it.

Mr. McAlister: I think the witness can understand it all right.

The Court: Yes, we will see how well he understands it.

Q. (By Mr. Flynn): Will you state your name, please? [25] A. My name is Fred Wong.

Q. Where do you live, Mr. Wong?

A. 1716 West Van Buren.

Q. That is Phoenix, Arizona?

A. Phoenix, Arizona.

Q. How long have you lived here, Mr. Wong?

A. About four and one-half years.

Q. What business are you in at the present time? A. Grocery.

Q. Grocery business? A. Yes.

Q. Are you a member of the Chinese War Relief Association? A. Yes.

Q. Are you acquainted with the history of that organization?

(Testimony of Fred Wong.)

A. I am—you mean what I do there?

Q. When was that organization formed, Mr. Wong?

A. When it started to form it was about eight years ago. At that time I wasn't here.

Q. As far as you know, it was formed about eight years ago? A. Yes.

Q. Do you know what the purpose of that organization was, why it was formed?

A. Well, yes, for helping Chinese refugee and soldiers. [26]

Q. For the purpose of helping Chinese refugees and the Chinese Army, is that correct?

A. Army; anything in China they need, to call us to help, we just follow and do what we can for China.

Q. It was formed some time shortly after Japan and China went to war about eight years ago?

A. Yes, since Japan invaded China and they start that association.

Q. Now, the purpose of the organization was to secure funds to send to the destitute people in China, is that correct? A. Yes.

Q. Where did those funds come from?

A. Funds from all Chinese in town, I mean anywhere, people who want to help, around—the Chinese people in Phoenix and way around the little towns like Mesa, you know, all around; around here, the little towns included.

Q. In other words, this Association was composed of the Chinese people in Maricopa County and outlying districts?

(Testimony of Fred Wong.)

A. And we help, inside County, outside County. Any Chinese like to help, we strive to take money.

Q. Did they have officers in this association?

A. Yes.

Q. In 1945, were you the Chairman of the Association? A. '45 and '46, yes. [27]

Q. And did you have a Treasurer of the organization? A. Yes.

Q. In 1945, who was the Treasurer of the organization? A. Ung Kok Si.

Q. How long had you known him prior to 1945, Mr. Wong?

A. Well, since I came in, I know him, about four years.

Q. Now, during this period of eight years that this relief—Chinese Relief Association was in existence, how did you collect the money; what method did you use to get the money?

A. We collect the money what we call—you mean when we collect money?

Q. How did you collect it?

A. Well, we send some Chinese to each store. If we heard news, say, the war in China, and we won the war and we try to send men all around the stores and collect money to help those who went to war, and sometimes we get news from China say the Japs is burning down city, and a lot of literature, and we send the men to the stores, and send men and show literature, and some time we have—every year, 7th of July, that day was Japanese start invade China, the first day, and then we always use that day to collect money.

(Testimony of Fred Wong.)

Q. Did you have different celebrations that you celebrated, like the double ten and double seven for the [28] purpose of securing money for the Chinese War Relief Association?

A. Yes, every year, 10th of October, that is China Independence Day, we always collect the money and spend for the celebration for the Independence Day, and this same money, we save a part of that money and send back to China to help the soldier or the Army, the soldier, wounded soldier who got hurt.

Q. Did you also have a celebration known as the Double Seven?

A. We don't have celebration, but we always have to take money, collect.

Q. Did you also have a Victory Parade?

A. Yes, we had the biggest one, we had in what is that, last year, the one right after the war.

Q. Well, I am talking about 1945, before that.

A. You mean, celebration for what, for the VJ Day?

Q. No. Did you have a celebration known as the Victory Parade for the purpose of securing funds for the Chinese Relief Association prior to 1945?

A. Well, will you tell me what that is, I don't understand that?

Mr. Flynn: Well, then, just strike the question.

Q. Did you also have jars or cans marked "Chinese Relief Association" which you put around the different Chinese stores so that people could contribute? [29]

A. Yes, we do.

(Testimony of Fred Wong.)

Q. And this Association, you said, had been in continuous operation since 1940—1938, 1939, since when? A. I didn't get you.

Q. When did this Chinese Relief Association start?

A. I don't know what year because at that time I wasn't in Phoenix.

Q. It was in operation during the four years you were here? A. Yes, yes.

Q. When that money was collected from these different sources that you have testified to here, what would you do with the money; did you give it to somebody?

A. When we collect the money and we get it to the treasury to keep first, all money turned to the Treasurer.

Q. And in 1943, who was the Treasurer?

A. 1943, 1944, '45—'43—Kok Si, Treasurer.

Q. In 1944, was he Treasurer? A. Yes.

Q. And 1945? A. Yes.

Q. 1942?

A. 1942—I guess so, because that year I wasn't Chairman, but I know about who was Treasurer.

Q. How about 1941?

A. 1941, I forgotten. [30]

Q. But you know then of your own knowledge for 1942 on through 1945, he was the Treasurer for the Chinese Relief Association?

A. Yes, I been here 1942.

Q. And that money was turned in to him from these collections you testified to? A. Yes.

(Testimony of Fred Wong.)

Q. What did he do with the money, Wong, do you know?

A. The money we turned in to him to keep them first and then we—to keep it, and we send back to China.

Q. As far as you know, were you able to send any money to China in 1942?

A. 1942—you mean—might be a little bit, some of it, but I forget how much.

Q. Why couldn't you send any money in 1942?

A. 1942, I think we—we had meeting, say that the Japs got the money so we afraid to send them.

Q. Now, you know that the United States went to war in December, 1941

A. Yes; at that time I wasn't here. Yes, I know, but I wasn't in Phoenix.

Q. Do you know whether or not after the war was declared between Japan and the United States whether Kok Si was able to send any money he had in his possession belonging to the Chinese Relief Association back to China? [31]

Mr. McAlister: Do you understand the question?

A. Yes. You mean after the war?

Q. (By Mr. Flynn): Yes.

A. Yes, we had meeting—

Q. No, I don't think you understand it. Was he able to send any money to China after the United States went to war with Japan?

A. After United States—Japan—after that, no, not much.

(Testimony of Fred Wong.)

Q. Do you know why he was not able to send it?

A. We thought Japanese—they take all mail. When mail get in China they get mail and they open mail, and they find check, and they take money.

Q. So for that reason, what did Kok Si do with the money, did he just keep it?

A. Yes, just keep it, yes.

Q. How often would the officers of this Association meet, or meet to discuss this situation; did you have any regular meeting time?

A. No regular meeting. Any business we had to talk over, then we call meeting.

Q. Do you remember just before Kok Si was arrested along about the 7th of October that you had a meeting where he made a report to the Association, do you remember that meeting?

A. Yes, I think we had a meeting about that time. [32]

Q. That would be about the 7th of October, 1945? A. Yes.

Q. And he reported to the Association, he made a report to the Association?

A. Yes, he report.

Q. Did he tell the Association at that time how much money he had that he was holding for the Relief Association?

A. Yes, he so report. He said he had about—between, I think \$14,000, something like that.

Q. Approximately \$14,000? A. Yes.

Q. That is what he reported to the Association?

(Testimony of Fred Wong.)

A. Yes, just about. He said a few more, maybe a little bit more come from little town like other town, he said that about how much he had.

Q. Then he said approximately \$14,000?

A. Yes, just about. I heard what he says, but maybe little bit more, little bit less.

Q. Did you know where that money was, Fred; did you know where he kept that money?

A. I don't know. People say——

Q. Not what the people say, but do you know yourself?

A. I think he kept in the safe, kept in his safe.

Q. And you know that Kok Si was arrested by the Narcotic Agents in October? [33]

A. You mean, I know who——

Q. I mean you know he was arrested, you weren't here?

A. Yes, I am not there, but I know it.

Q. And after his arrest did he turn over any money to you as Chairman of the Chinese Relief Association? A. No.

Q. Have you ever gotten any of that money?

A. You mean he turn that money back to me? No, he never did.

Q. As far as you know, did he turn it over to any member of the Chinese Relief Association after his arrest? A. No.

Q. Do you know what happened to the money he had?

A. Well, you mean what happened to the money——

(Testimony of Fred Wong.)

Q. What happened to this \$14,000 that he had.

A. No, you mean——

Q. Do you know what happened to it?

A. No—yes, I read the papers. The policemen take the money.

Q. You read in the papers that the policemen took the money out of the safe? A. Yes.

Q. Fred, do you know whether or not Kok Si kept any books? You know what books are? You are in business, aren't you, you keep books in your store?

A. Yes, I think he had books, but I don't know, but [34] sometimes read very good—he didn't see very good, but I know he had books.

Q. You know he had books for the Chinese Relief Association? A. Yes, all Chinese.

Q. As far as Kok Si was concerned, did he have any interest or did he own any of this approximately \$14,000; did that belong to him or did that belong to the Chinese Relief Association?

A. Well, he supposed to what—we had \$14,000 in his hand anyway.

Q. In other words, he had approximately \$14,000 in his hand? A. Anyway.

Q. That was not his money?

A. That must be he owe our Association \$14,000.

Q. In other words, he was the Treasurer of the Company? A. Yes.

Q. He had that much money belonging to the Association? A. Yes, that is right.

(Testimony of Fred Wong.)

Q. And that \$14,000 was not his?

A. Must be not his, that belongs to us, because he Treasurer to keep money.

Q. Have you personally, or has the Chinese Relief [35] Association gotten any of that money back? A. You mean personally?

Q. Yes, have you personally, or has the Chinese Relief Association ever gotten any of that \$14,000 since he was arrested? A. Got from him?

Q. From anybody? A. No.

Mr. Flynn: That is all.

Cross-Examination

By Mr. McAlister:

Q. You said you lived in Phoenix about four and one-half years? A. Yes.

Q. And you have known Kok Si since shortly after you came here? A. Yes.

Q. You have been in the grocery business all of that time? A. Yes, yes, sir.

Q. When did you first become a member of the Relief Association?

A. When? How I got in?

Q. When did you first become a member of it?

A. Well, we—I been here last year, 1942, and then [36] they elect me Chairman in 1943—'3 '4, '5, '6—yes, I think '42—yes, '43, yes, yes.

Q. How does anyone become a member, just by making a donation, does that make them a member?

A. I don't get you.

(Testimony of Fred Wong.)

Q. How does anyone become a member of the Association, just by making a donation? Does that make them a member?

A. Well, I suppose all the Chinese—we don't need any member card, all Chinese supposed to be member. They had the duty to help for this Association.

Q. You say you were elected Chairman in 1943 first?

A. Yes, 1943.

Q. How did they do that? Did they have a general meeting, or how did they elect their officers?

A. Oh, same like Major, judge by name.

Q. Did they have an annual meeting or a banquet, or something where they do that?

A. Not on that night, night for the election, nomination for the name, and then put them up and put all the Chinese who work for to get more voice.

Q. Where was that meeting held?

A. In the Chinese School.

Q. In the School? A. Yes.

Q. How frequently did they hold meetings?

A. Huh? [37]

Q. How frequently did they hold meeting?

A. How often?

Q. Yes.

A. We don't have regular meeting, but we—when we have some business then I called the meeting, call those what we call directors come to the meeting.

Q. You had a Board of Directors?

A. Yes.

(Testimony of Fred Wong.)

Q. How many members were on that?

A. We had about 30.

Q. Did you have a Vice President and Secretary?

A. Yes.

Q. A Vice Chairman?

A. Yes.

Q. And as far as you know, Kok Si had always been the Treasurer of the organization?

A. Yes, since I been Chairman he be Treasurer to now, but I think before too.

Q. And he kept the records of all the transactions?

A. Yes, he had his own records.

Q. You said because of his poor eyesight he was not able to keep it as accurately as he might?

A. No.

Q. You said because his eyesight was poor he didn't keep them as good as he might?

A. Keep the money? [38]

Q. Keep the records as good as he might because of his eyesight?

A. Yes, he had record, and when to turn money in, in what day, he received for so much money.

Q. Did he ever exhibit the records to you?

A. Mostly the bookkeeper take it and then they report to me.

Q. He would report to you?

A. Yes, when we had meeting.

Q. Kok Si would do it at that time?

A. Yes.

Q. You said, I think, that they had a meeting in October where you made a final report. When was that meeting?

A. October?

A. Yes, 1945.

(Testimony of Fred Wong.)

A. '45, '46, yes, we had great big meeting on that day.

Q. Was that a big banquet meeting that they had up at the Westward Ho? A. Yes.

Q. I believe you had one there in August about right after the Victory Parade, didn't you?

A. August? Might be that one is, I forget. August might be we gave banquet to the Cadet boy from the Luke Field; might be. [39]

Q. How about the expenditures of the organization, how was that handled? Was that taken up by the Board of Directors? A. Yes.

Q. When you wanted to spend money or something, did you take that up before the Board of Directors?

A. Yes. We didn't need for small money. We just tell Treasurer, "You pay out \$20, hundred dollars." If big money, then we had meeting, yes.

Q. Did you have a meeting in order to pay for this banquet at the Westward Ho or not?

A. Yes, you mean—yes, that all had to pay by the China War Association.

Q. They authorized you to pay this?

A. Yes, all expense.

Q. Do you know how the money was sent to China whenever it was sent there; do you know what method was used in sending the money?

A. What money?

Q. What method, how they send it to China?

A. How we sent it?

Q. Yes.

(Testimony of Fred Wong.)

A. We send it like before, we send it back to Canton City, State of Canton, and hold delivery, and since the Jap occupation in Canton, and then we can't send any money, so we keep all the money in here. [40]

Q. You first sent that to a bank in New York or San Francisco, would you? A. Huh?

Q. You would first send it to a bank in New York or San Francisco?

A. Yes, we send some money to New York Bank of China in New York.

Q. Some items in your books show that you remitted or sent money to headquarters. Where would that be?

A. To headquarters? What headquarters?

Q. That is what I was wondering. It says, "Sent to headquarters." Does that mean to China or some place in the United States?

A. Might be sent to headquarters in China.

Q. I notice on some of these remittances that there are fairly large commissions, or a commission on some of these remittances. Does that go to the bank for sending it over, or what; do you know how that was handled?

A. You mean how the money goes to China?

Q. Well, from the time it left here?

Mr. Flynn: I don't think he understands the question.

Mr. McAlister: Who sent the money? Did Kok Si always send it himself or did he send it over to you and you sent it in?

(Testimony of Fred Wong.)

A. When we send money and Kok Si and keep the money, [41] go with the Secretary and send, sometimes I go to the bank. We have three men go to the bank.

Q. And you get a draft or a money order or something, or a Cashier's check?

A. Yes, we send Cashier's checks to the Bank of China and then we cash check, send to the Bank of China in New York City, then we go with a letter and tell them how much money we send to go back to China.

Q. Had you been down to Kok Si's place of business very frequently?

A. You mean his store?

Q. Yes, at 113—

A. Yes, when I get something I have to see him, I go down there.

Q. Was it about the business on the Relief Society?

A. Yes, when I have to go, I go.

Q. You buy from his Chinese food market there too, or his Chinese Association? He said he was selling Chinese foods and things; did you ever buy any of them?

A. You mean buy Chinese goods from his store?

Q. Yes.

A. Not much, because we don't eat much Chinese food.

Q. But you only went there when it was necessary on business of some kind, you didn't go there regularly?

A. You mean myself?

Q. Yes. [42]

(Testimony of Fred Wong.)

A. Yes, I had store keep me busy all the time.

Q. You personally don't know exactly how he did handle the money he took in, do you?

A. That money?

Q. I mean you don't yourself know how he handled the money? All you know is what you heard from others, isn't that true?

A. The money, you mean, he held there?

Q. Yes.

A. Yes. When the money collection, the money just went in to him.

Q. You don't know whether he put it in the bank or kept it there?

A. I guess he had it in his safe.

Q. You just think he did?

A. I think he had it in his safe.

Q. You never made any check on that or observe him, did you? A. Checks?

Q. I mean you never observed him putting it in the safe, did you?

A. No, we hand it to him, because every time when we want some money to pay out some bills, he always open safe and bring money out.

Q. If he wanted to pay the bills on anything, he would open the safe and take the money out?

A. Yes. Any time we go we say, "Here is the bill and we need to pay for it, our Association," and he would open safe.

Q. You don't know whether he took the money out there to pay all of these other bills or not?

A. For his own bill?

(Testimony of Fred Wong.)

Q. Yes.

A. That part I don't know. I know my part.

Q. You know approximately how much that banquet cost you up in the Westward Ho in October, 1945? A. You mean the whole bill?

Q. Yes. A. Pretty big bill.

Q. Up in the neighborhood of \$3000, you think?

A. I know that meal cost over a thousand dollars besides the liquor and all kinds of beer, and the floor show, and it took money.

Q. Do you recall about the one they had in August? A. Huh?

Q. Do you recall about the banquet they had in August which you said might be for the Cadets?

A. Yes, might be, but I forget sure for what?

Q. Do you know how much that one cost?

A. I forget all but the big one—those not so big, I don't pay much attention to.

Q. What time in 1942 did you say you came here, Mr. [44] Wong? A. '42? What month?

Q. Yes. A. I been here July.

Q. You came in July? A. Yes.

Q. You don't know when you got here whether or not Kok Si was still in prison, do you?

A. I don't get you.

Q. Did you know that Kok Si had been in prison on a narcotic charge in the years 1941 and 1942? A. I don't know.

Q. You don't know that?

A. I didn't know him unless I came in Phoenix.

(Testimony of Fred Wong.)

Q. Did you meet him right after you came, or some little time?

A. Oh, I met him after two or three months, not right away.

Q. And when you first knew him, as far as you know, he was Treasurer of the organization?

A. Yes.

Mr. McAlister: That is all, I believe.

Mr. Flynn: One other question. [45]

Redirect Examination

By Mr. Flynn:

Q. Fred, while you have been Chairman of this Association, do you know whether or not any money was ever returned from the Bank of New York that you had sent to China, because they could not transmit it to China because of transportation difficulties? Do you understand my question?

A. You mean, they returned money?

Q. Have they ever returned money back to you because they could not get it to China because of the war?

A. It seem like they returned once, it seemed like they returned money once, so we had meeting and we——

Q. Just a minute, your answer was it seemed like once they returned some money? A. Yes.

Q. Do you remember about what year that was?

A. Might be—I don't know, '43 or '44.

Q. Now, do you know why they returned that money?

(Testimony of Fred Wong.)

A. They say—they might say something—tell we wait, something like that, until they go advise us again what they going to do.

Q. They could not send it to China at that time, so they sent it back to you? A. Yes.

Q. Now you testified that when you sent this money [46] to China, the three of you went down, you and Kok Si and one other party, would go to the bank and get a check from the bank?

A. Yes, if we want to send money.

Q. When you would start to the bank where would you get the money to turn over, the money to get the draft, from Kok Si?

A. I had to bring the money to buy the Cashier's check.

Q. Where would you go to get the money when you started to the bank, the three of you?

A. Oh, where he get the money? From his safe.

Recross-Examination

By Mr. McAlister:

Q. Did he always do that? A. Always do.

Q. Did he ever write checks for it?

A. Yes, he bring money and get into the bank and through the window ask the teller, and tell him he want to cash check. Then he pay money and get check.

Mr. Flynn: A Cashier's check? A. Yes.

Q. Bought a Cashier's check?

A. Yes, bought Cashier's check.

(Testimony of Fred Wong.)

Q. (By Mr. McAlister): Do you know whether he ever paid [47] for any of these Cashier's checks by a bank check? A. Yes.

Q. On his own—on his own bank account?

A. I think one time I go with him and they pay money and buy Cashier's check.

Q. Well, do you know whether he ever wrote a check to the bank to buy a Cashier's check with?

A. Yes, he buy Cashier's check and send to New York City.

The Court: He does not understand that.

Q. (By Mr. McAlister): Do you know whether Kok Si ever wrote a check on his own bank account and took the check and bought a Cashier's check with it, or not?

A. No, sir; he didn't write no check. He had no account.

Q. As far as you know, he had no bank account?

A. But I, one time, I saw him pay the cash to the bank.

Q. One time you saw him pay cash?

A. Yes.

Q. And as far as you know, he got it out of the safe? A. Yes.

Q. Was that the only organization you were connected with, the War Relief?

A. Yes—you mean the only one?

Q. Yes. [48]

A. Yes, the only one I remember with it, work together. That is the one I know. Besides, maybe some more, I don't know.

(Testimony of Fred Wong.)

Mr. McAlister: I think that is all.

The Court: We will have a brief recess now.

(Thereupon a short recess was taken, after which all parties being present as noted by the Clerk's record, the trial resumed as follows:)

Mr. Flynn: Mr. Singh.

YEE F. SINGH

was called as a witness on behalf of the plaintiffs, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Flynn:

Q. Will you state your name, please?

A. Yee F. Singh.

Q. Where do you live, Singh?

A. 517 North Fifth Street.

Q. How long have you lived in Phoenix?

A. How long I live in Phoenix? Since 1902.

Q. Since 1902. Are you in business at the present time?

A. In business, American Kitchen.

Q. Do you run the American Kitchen?

A. Huh?

Q. You ran the American Kitchen?

A. I ran American Kitchen 43 years.

Q. That is a restaurant here in Phoenix, is it not?

A. Yes.

Q. You ran that for 43 years?

A. Yes, 43 years.

(Testimony of Yee F. Singh.)

Q. Singh, you are quite well acquainted among the Chinese population in Phoenix, are you not?

A. Pretty—quite a few, yes.

Q. You know quite a few of them?

A. Yes.

Q. Are you a member of the Chinese Relief Association?

A. Chinese Relief Association? Yes.

Q. Do you know, Singh, when that Association was formed, when it started? A. Huh?

Q. Do you know when that Association started?

A. Since war. War bring it.

Q. What war was that?

A. Chinese war bring it in '37—1937, I believe.

Q. Was that in 1935 that China and Japan went to war, or 1937? A. 1937, I believe.

Q. You think it was 1937. I thought it was 1935, but [50] you are probably right.

A. No, 1937, I think.

Q. That Association, the Chinese War Relief Association was formed shortly after the China-Japanese War broke out? A. Yes.

Q. Will you tell the Court what the purpose of that Association was, why was it formed?

A. It formed that Association to raise moneys to send back to China—send back to Old Country to help, see?

Q. The Association was formed to raise money to send back to the people in China to help them?

A. Yes.

(Testimony of Yee F. Singh.)

Q. Now, Singh, can you tell us whether or not that Association continued up to, until the war was over with Japan?

A. I think war over in 1946—1945—

Q. Let me put it this way: How long did the Association continue to operate, from 1937 until 1946? A. Until 1946.

Q. Is the Chinese Relief—

A. 1945—I mean 1946.

Q. Is the Chinese Relief Association still functioning?

A. Still running? No, it is not running now.

Q. Not running now? A. No.

Q. It stopped after the war?

A. Yes, stop.

Q. In 1943, '44 and '45, do you know, Singh, who was Treasurer of the organization or the association? A. I was not Chairman.

Q. I was asking who was.

A. Oh, Kok Si?

Q. Kok Si? A. Yes.

Q. As Treasurer, do you know whether or not the proceeds that were collected; that is, the money that was collected from these different—

A. The money was collected, we had four different parties go east, north, south, west, eight people go out every month—

Q. Now, Singh, just a minute. A. Yes.

Q. Will you explain to us in your own words what the method was how you collected this money for the Chinese Relief Association?

(Testimony of Yee F. Singh.)

A. We go ask people to help, help country; everybody help raise it. We had easy way to get it. Everybody give. Some give large amount, some give small amount, see? [52]

Q. Did you, during those years 1942, '3, '4 and '5, appoint different Chinese to go out into the territories and collect money? A. Yes.

Q. And those committees or those men would collect the money from the Chinese? A. Yes.

Q. And also from Americans?

A. Some agency; quite a few here right now, see?

Q. When that money was collected, do you know what they did with it?

A. We all start early in the morning and come back in the afternoon and we turn it in, give to Kok Si.

Q. You turned the money in to Kok Si?

A. Everybody go out turn it in to him, see?

Q. How many times a year did you conduct these drives, where you went around collecting this money?

A. I forget all about it, but pretty near every month, every two months, or three months, or month, something like that.

Q. As far as your memory serves you, it was probably at least every two months?

A. Yes, not later than two months.

Q. In addition to this method you had for collecting this money, did you have other ways to collect money, like celebrations? [53]

(Testimony of Yee F. Singh.)

A. No, I never go collect money at all, just to ask people to help.

Q. Did you have jars or cans in the Chinese stores?

A. Oh, yes, yes, we have some cans, yes, can in different stores, see?

Q. And that was marked, "Chinese Relief Association?"

A. Yes, marked "Chinese Relief Association," every restaurant, every grocery, see?

Q. Every restaurant and every grocery store?

A. Yes.

Q. That money, likewise, as far as you know, was turned in to Kok Si as Treasurer of the organization?

A. It is all turned in to Kok Si, all accounts and everything, see?

Q. Now, Singh, do you know of your own knowledge, do you know personally where Kok Si kept that money when it was turned over to him?

A. What he was going to do with the money? He send some back, not report very much. Every China boy trust him too much, never ask him how much he got there, and when he send some money back, just once hold meeting and then he report send some money back, but not very often send money back.

Q. When he got the money, as far as you know, he would send it back to China? A. Yes.

Q. Do you know whether or not he was able to send that money back to China after the war with

(Testimony of Yee F. Singh.)

Japan broke out; that is, the war between the United States and Japan?

A. I don't know—quite sure—I never ask him anything that way.

Q. Were you present at the Association meeting that was held in October of 1945, where Kok Si reported to the Association on how much money he had in his possession?

A. Yes, hold meeting, told he send some money back, but he never did.

Q. Did he tell you how much he had in his possession belonging to the Association?

A. No, he didn't. I never ask him; I never ask him how much Association have money; I never ask him, friend that way.

Q. You trusted him?

A. Yes, I trust him.

Q. I mean, Singh, do you remember attending a meeting in October, 1945, where Kok Si told all the Chinese boys how much money he had belonging to the Relief Association?

A. I believe he did, but I don't remember how much he say. I know he call meetings all right, he call meeting about two or three day after that, and then he got arrested. [55]

Q. He called a meeting and about two or three days later he was arrested? A. Yes.

Q. As far as your memory serves you—

A. That is as far as I remember.

Q. Do you know where Kok Si kept this money that he collected from different members of the Relief Association; do you know whether he put

(Testimony of Yee F. Singh.)

the money in the bank or whether he kept it in the safe there at 113 East Madison?

A. He put in the safe. Every time I see him put in the desk there, count out how much it was, for different party, people, know, go out of town.

Mr. Flynn: I think he was going to say that four or five different parties go out and he put the money in the safe.

Q. As far as you know, the money he had belonged to the Chinese Association and he put that in the safe?

A. I know he put money in the safe, all right, but I don't know money belonged to the Association.

Mr. Flynn: I believe that is all.

Cross-Examination

By Mr. McAlister:

Q. You are running the American Kitchen again, aren't you, Singh? [56]

A. Yes, 43 year, 44 years. I still have in 44.

Mr. Flynn: I don't think he is running it now, but it doesn't make any difference.

Q. (By Mr. McAlister): Were you ever an officer in this Chinese Relief Association?

A. Yes.

Q. Were you ever an officer in it, the Chairman of it, or on the Board of Directors?

A. No, I just go along and help to do it.

Q. You just went out and helped collect it?

A. Collect the money, that is all.

Q. You were never a member of the Board of Directors, or Chairman, or Vice Chairman?

(Testimony of Yee F. Singh.)

A. No, whatever I get, bring back, I just found out how much it was and give the whole money there, and give the book and everything, see?

Q. You stated that the Association had stopped or quit shortly after the, you said 1946?

A. Yes.

Q. What did they do, just quit making drives, or what?

A. They can't make drive any more, we have no drive money, money is gone.

Q. Are they still having meetings?

A. Huh?

Q. Do they still have any meetings? [57]

A. No, not no meetings, maybe once a year, yes.

Q. What would they do with that money if they had it now? A. Money that go to Kok Si?

Q. Yes.

A. I don't know what he wants to do with it; how much money. I don't know what he going to do with it.

Q. You stated that apparently they had some trouble with the collections, somebody—some people charging them for collecting it, or what?

A. No, tried to collect around, money they didn't know where it go to. I wouldn't myself. I don't go ask people help any more.

Q. Do you know how they sent the money to China? A. Huh?

Q. Do you know how they sent that money to China?

A. Usually send by wire, see? That is what I

(Testimony of Yee F. Singh.)

hear, never seen any money, who do it, sending. I never ask them what they doing, see?

Q. How frequently did you go down to Kok Si's place? A. What is that?

Q. How often did you go to Kok Si's business on East Madison?

A. How often he send money back to China?

Q. No, how often did you go down to his place of business on East Madison? [58]

A. Oh, I go down every day when we go out collect money; few boy together bring that money back right in the afternoon, see?

Q. Would you always go down on War Relief business, or go down on other business?

A. No, not business of go back to the store, see?

Q. Well, did you ever buy anything from his store, any food for your restaurant?

A. I ever buy anything in his store, Sun Kwung Tong Company?

Q. Yes.

A. He didn't have nothing to buy.

Q. He didn't have anything? A. No.

Q. Had you been in his office very many times when he opened his safe?

A. No, I never been in the safe—you can't walk in like this private room with safe in it.

Q. You never went in his private room?

A. No, right in back there, right in back.

Mr. McAlister: I think that is all.

The Witness: All right, thank you.

(The witness was excused.)

Mr. Flynn: Mr. Toy. [59]

D. H. TOY

was called as a witness on behalf of the plaintiffs, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Flynn:

Q. Will you state your name, please?

A. D. H. Toy.

Q. Where do you live, Mr. Toy?

A. Sixteenth Street and Camelback Road.

Q. In Phoenix, Arizona? A. Yes, sir.

Q. How long have you been in Phoenix?

A. Since 1915.

Q. And what business are you in, if any, at the present time? A. Grocery business.

Q. Are you a member of the Chinese War Relief Association? A. Yes, sir.

Q. How long have you belonged to that Association? A. Since 1937.

Q. Was that the date that the Association was formed?

A. Right after the Jap had fight against China, that is when we started it.

Q. It was started shortly after the Sino-Japanese War broke out? [60] A. Yes.

Q. What was the purpose of that Association?

A. Well, just collect the money for the boys in China.

Q. Will you speak a little louder?

A. Try to collect some money, you know, for helping China war relief.

(Testimony of D. H. Toy.)

Q. That was to collect money for the purpose of helping the destitute people people in China, is that your answer? A. Yes, sir.

Q. During the years '43, '44, and '45, do you know who was the Treasurer of that Association, Mr. Toy? A. Kok Si.

Q. How long had you known Kok Si?

A. Oh, I know him quite a while ago.

Q. How many years?

A. Long time, since he come to Phoenix.

Q. Say, ten years? A. More than that.

Q. And you know of your own knowledge that he was the Treasurer of the Chinese Relief Association for the three years, 1943, '44, and '45?

A. Yes, sir.

Q. Now, Toy, will you explain slowly and in your own words what method was used by the Relief Association during these years, and what was necessary to collect the [61] money to send back to China; that is, how did they get their money, and so forth?

A. I know I just go collect it outside of town, see, just go collect the money and come back and bring it back to the Treasurer, that is all.

Q. In other words, this Association had committees that made drives and went around and collected the money from different Chinese people?

A. Yes, sir.

Q. And they also had parties, did they not, and celebrations, Double Ten and Double Seven?

A. Yes, sir.

(Testimony of D. H. Toy.)

Q. And they had jars and cans for the Chinese Relief Association in stores for the Chinese Relief Association? A. Yes, sir.

Q. When that money was collected from these different ways that you testified to, what was done with the money, do you know?

A. Well, all we had collected the money, turned it over to the Treasurer.

Q. After the money was collected it was turned over to the Treasurer? A. Yes, sir.

Q. Who was the Treasurer? A. Kok Si.

Q. Was that turned in to him at his place of business at 113 East Madison?

A. That is the place, yes, sir.

Q. Do you know what he would do with the money after he got it; whether he would put it in the bank or put it in the safe?

A. I know he put that in the bank—I mean put it in the safe.

Q. As far as you know, he put it in the safe?

A. Yes, sir.

Q. Do you know whether or not Kok Si ever had a bank account? A. No, I don't.

Q. After the money was collected and turned in to Kok Si as Treasurer of this Association, did he then send it to China, as far as you know?

A. I don't know, that is not my job.

Q. In other words, your job was to collect it and turn it in to him? A. Yes, sir.

Q. Are you an officer in that Association, Mr. Toy? A. I am one of the members.

(Testimony of D. H. Toy.)

Q. You are just a member? A. Yes, sir.

Q. That membership during those years was composed of the Chinese people in the County of Maricopa, is that correct? [63] A. Yes, sir.

Q. Were you present at any meeting that Kok Si attended in October, 1945, when he made the report to the Association of the money he had on hand? A. Yes, sir.

Q. Do you recall how much he told the Association that he had for the Chinese War Relief Association?

A. The last meeting I was in there, he told about a little over \$14,000.

Q. In other words, this, Kok Si reported to the Association? A. Yes, sir.

Q. In October 5th, or 6th of October?

A. Something like that, yes, sir.

Q. That he had a little over \$14,000?

A. Yes, sir.

Q. Belonging to the Chinese Relief Association?

A. That is right.

Q. Did he also tell you at that time, or did he also tell the Association at that time that he was unable to send the money to China because of the war with Japan? A. That is right, sir.

Q. Did he tell you and the Association at that time that he had made efforts to send the money but he could not get it through?

A. No, he didn't tell me. [64]

Q. Do you know what happened to the \$14,000 that he told you he had on hand at that time?

(Testimony of D. H. Toy.)

A. Yes, sir; he said the Association had that much money on his hands.

Q. Do you know what happened to that \$14,000; do you know where it is now?

A. No, I don't.

Q. You don't know where it is? A. No.

Mr. Flynn: That is all.

Cross-Examination

By Mr. McAlister:

Q. How long did you say you lived here?

A. Since 1915, sir.

Q. '15? A. Yes, sir.

Q. You were almost born here, weren't you? You have known Kok Si ever since you came here?

A. That is right, yes, sir.

Q. And he was kind of a leader among the Chinese for quite a while, wasn't he?

A. Yes, sir.

Q. Did you ever go to his place of business?

A. Not very often.

Q. Were you ever an officer in the Relief Association, [65] or ever on the Board of Directors, or Chairman or Vice-Chairman?

A. I don't know about that time. I know last— Fred Wong is all I know is member of—

Q. He was Chairman? A. Yes, sir.

Q. Mr. Wong testified that they had meetings of a small group. Did you ever go to those meetings? A. Yes, sir.

Q. Sort of Board of Managers, something like that? A. Yes.

(Testimony of D. H. Toy.)

Q. In which they authorized the sending of money to China and to pay for the entertainment of the Cadets, or various other things?

A. Yes, sir.

Q. Motion pictures or banquets, and things like that. Did you go to those meetings?

A. Yes, sir; I did.

Q. And this last meeting that you speak of in October of 1945, that was a big meeting up at the Westward Ho? A. Yes.

Q. That was a sort of a final celebration, wasn't it? A. They had a celebration there.

Q. They used one of those big rooms up there?

A. Yes, sir. [66]

Q. And is that the meeting that Kok Si made the statement as to the amount that had been collected?

A. Well, he make meeting at his store?

Q. Before that?

A. Yes, about the amount of money.

Q. How long before, a month?

A. I think October 6th or 7th, I don't remember exactly the dates.

Q. And you have been a member of the Association ever since it started in 1937?

A. Yes, sir.

Q. Do you know whether Kok Si was Treasurer during all of that time?

A. Yes, I know he is all the time.

(Testimony of D. H. Toy.)

Q. Do you know who handled the funds during the two years that he was away in prison on that first narcotic charge?

A. No, I don't remember.

Q. You don't know who handled that in the two years? A. No, sir.

Q. Did you ever see the books of the Association? A. No, I never see books.

Q. He never went over those with you at any meeting, he just verbally reported how much he had on hand? A. Yes.

Q. Were you ever present when he purchased any of [67] these Cashier's checks which you sent to New York to forward to China? A. No.

Q. You never went with him? A. No.

Q. Were you ever in his office where he keeps his safe? A. No, I never been.

Q. Did you ever make any purchases from the store that he had there, or did he have anything that you needed? A. No.

Mr. McAlister: That is all.

Mr. Flynn: That is all.

(The witness was excused.)

Mr. Flynn: Frank Ong. Your Honor please, I'd like to use the Interpreter on this man.

The Court: All right.

FRANK ONG

was called as a witness on behalf of the plaintiffs, and being first duly sworn, testified through the Interpreter as follows:

Direct Examination

By Mr. Flynn:

Q. Will you state your name, please?

A. Frank Ong. [68]

Q. Where do you live, Mr. Ong?

A. 1037 East Jefferson.

Q. Are you the Chairman of the Wing Mae School of China Association? A. Yes.

Q. Now, is that just an association or a corporation, or just a committee?

A. Just an association.

Q. And as far as you know, when was that association formed, Mr. Ong?

A. It has been formed over ten years.

Q. How long have you been Chairman of the Association? A. About 16 years.

Q. There must be some mistake. He says it was formed over ten years, and he has been Chairman of it for 15 years.

A. Ever since it existed.

Q. Here in Phoenix? A. Yes.

Q. And what was the purpose of the forming of that association, Mr. Ong?

A. It was to have money to send back to China for support of the Wing Mae School.

Q. Where is the Wing Mae School located?

A. In Woo Long, Canton, Huaiping, China.

Q. That is just one school? A. Yes.

(Testimony of Frank Ong.)

Q. Now, who composes the association here in Phoenix, in Maricopa County; who are the members of this association?

A. Everyone that belongs to the Wing Mae District in China, which is approximately 20 merchants here in town belong to it.

Q. They belong to that association, the Wing Mae School in China? A. Yes.

Q. How would you secure the money that you sent back; from where did you get that; from what source did you get it?

A. Whenever they needed money they would write to me and I would get all of our members together and we would go out and ask for donations.

Q. Who was Treasurer of this organization during the years '43, '44 and '45? A. Kok Si.

Q. Do you know whether or not in October of 1945, when Kok Si was arrested, if he had any money in his possession belonging to the Wing Mae School in China Association? A. Yes.

Q. Do you know how much that was? [70]

A. Approximately \$1900.

Q. Did you turn that money over to Kok Si yourself?

A. The biggest part I turned over and some was turned over by different parties.

Q. Do you know of your own knowledge that in October, 1945, when he was arrested, that he had \$1900 belonging to the Wing Mae School in China?

A. Yes.

(Testimony of Frank Ong.)

Q. Do you know where he got that money?

A. I presume it was in the back, in the safe.

Q. Do you know whether or not he sent that money or any part of it to China?

A. This money was to be sent to China at some time through the Bank of China in New York, but it was sent back to us.

Q. I understand, now, he tried to send it, and it returned because they could not send it?

A. It was returned on account of not able to get it through.

Q. Do you know where that money is now?

A. I don't know where the money is now, it has never been returned to us.

Q. It has never been returned to you?

A. Never been returned.

Mr. Flynn: That is all. [71]

Cross-Examination

By Mr. McAlister:

Q. You stated you had been Chairman of this Association ever since it was formed in Phoenix?

A. Yes.

Q. Do you know anything about this school in China, what kind of school it is?

A. Yes, I know where it is in China, and heard from that school since.

Q. Since the war, that is? A. Yes.

Q. And where was it located in China, near what large city? A. Near Canton.

(Testimony of Frank Ong.)

Q. Do you know when was the last money that was sent to China?

A. No, it has been too long. I just remember when that money was sent back.

Q. Did they take up collections for this every year? A. Yes.

Q. Even after the war? They could not send it; they could not send the money—I mean they still take up collections? He said they had one remittance sent back on account of the Japanese occupation, and I want to know whether or not they continued to take up collections for the school after that. [72] A. No.

Q. Did Kok Si keep the books for the school all the time? A. Yes.

Q. He was Treasurer ever since you were Chairman of the Association? A. Yes.

Q. Did he ever show you the books? A. Yes

Q. How frequently?

A. Once in a long time.

Q. Were there any other officers besides yourself and Kok Si? A. No, just me and him.

Q. Did they hold meetings of the Association?

A. No, very seldom.

Mr. McAlister: That is all.

Mr. Flynn: That is all.

(The witness was excused.)

Mr. Flynn: Henry Gong.

HENRY GONG

was called as a witness on behalf of the plaintiffs,
and being first duly sworn, testified as follows:

Direct Examination

By Mr. Flynn:

Q. Will you state your name, please?

A. Henry Gong.

Q. Where do you live, Mr. Gong?

A. Chandler.

Q. Chandler, Arizona? A. Yes.

Q. What business are you in? A. Grocery.

Q. How long have you lived in Arizona?

A. Since 1939—1929—since 1929.

Q. 1929? A. Yes.

Q. How long have you been in business there in
Chandler? A. Since 1929.

Q. You have been in business since 1929?

A. Yes.

Q. Are you a member of the Chinese Chamber
of Commerce, Mr. Gong? A. Yes.

Q. Is that a corporation? A. Yes.

Q. Is is a non-profit corporation? A. Yes.

Q. Do you remember when it was organized?

A. Oh, along about 1938 or 1939, I forget exactly.

Q. About February of 1939, is that right?

A. Yes.

Q. And who are the members of that Chinese
Chamber of Commerce?

A. Well, all the Chinese stores in the Valley.

Q. All the Chinese merchants in the Valley?

A. Yes.

(Testimony of Henry Gong.)

Q. Since the date it was organized down through the years since 1939, can you tell me approximately how many members it has had?

A. Oh, along about a hundred.

Q. About a hundred each year? A. Yes.

Q. Do you have officers in the corporation?

A. Yes.

Q. And who was the President? A. I am.

Q. Have you been President ever since it was organized? A. Well, sometimes.

Q. You are President now, are you not?

A. Yes.

Q. How long have you been President?

A. Well, the last year—for the last few years, I been for the last four years.

Q. The last four years? A. Yes, sir. [75]

Q. You were President in 1943, '44, '45 and '46, is that correct? A. Yes.

Q. Did you have a Treasurer during all of those years? A. Yes.

Q. Who was the Treasurer? A. Kok Si.

Q. Did you have any funds in 1945, in October, 1945, in the possession of Kok Si, as Treasurer of the Chinese Chamber of Commerce?

A. Yes, he had about \$800.

Q. That was your money in his possession?

A. Yes.

Q. Do you know where that money was kept, Mr. Gong? A. I don't know.

Q. Let me put it this way: Do you know whether or not Kok Si had a bank account?

A. Well, he kept it in his safe.

(Testimony of Henry Gong.)

Q. As far as you know, approximately \$800 was kept in his safe there at 113 East Madison?

A. Yes.

Q. He didn't, as far as you know, have a bank account and kept the money in a bank?

A. No.

Q. Do you know what happened to that money, Mr. Gong? [76]

A. Well, until I read the paper.

Q. Well, it was taken by the Government agents, as far as you know? A. Yes.

Q. Have you ever received any of that money back? A. No.

Q. And as President of the corporation, do you know whether any other member of that corporation; that is, the Chinese Chamber of Commerce, have gotten any of that \$800 back? A. No.

Q. Where did that money come from; how did you happen to have that \$800 on hand?

A. Well, we get it by dues every month from the members.

Q. In other words, that represents dues that is paid by the members, monthly dues paid by members? A. Yes.

Mr. Flynn: That is all.

Cross-Examination

Mr. McAlister:

Q. You say you have been President off and on ever since it organized?

A. In the last four or five years.

(Testimony of Henry Gong.)

Q. And Kok Si was Treasurer during all of that time? [77] A. Yes.

Q. And had he been Treasurer before that?

A. Yes, I think so.

Q. Or do you know? A. Yes.

Q. And this \$800 represents dues, you say?

A. Yes.

Q. Did he keep the books of the organization?

A. Yes.

Q. Did he ever show them to the members that you know of?

A. Oh, yes, any time—we kept meeting, you know, to make reports and see how much money we got left.

Q. He would show you the books or——

A. Just make—tell us.

Q. You have not seen them yourself?

A. No.

Q. Examined them? A. No.

Q. And this approximately \$800, how long had he had it, do you know?

A. I don't know, probably be a long time.

Q. Might have had it a long time?

A. Yes.

Q. They collected dues every year?

A. Yes. [78]

Q. How much was it?

A. Five Dollars each.

Q. Who collected it, did he collect it, or do this, or did you collect it?

A. Sometimes we send somebody to go around and collect it.

(Testimony of Henry Gong.)

Q. Just send somebody around?

A. Yes, sir.

Q. This covers all of the stores in the Valley?

A. Yes.

Q. There is only one Chinese Chamber of Commerce? A. That is right.

Q. And does the Chinese Chamber of Commerce have a bank account?

A. I don't know whether I understand.

Q. Does the Chinese Chamber of Commerce have a bank account?

A. Yes, we have one one time.

Q. You have one?

Mr. Flynn: He said he had one at one time.

Q. (By Mr. McAlister): Do you have one now?

A. No, we don't have one.

Q. Where did you have it?

A. What you mean?

Q. What bank did you have it in?

A. I think First National Bank. [79]

Q. First National Bank. Do you know when it was opened? A. No, I don't know.

Q. Did Kok Si always handle all of the funds?

A. Well, not always, but sometimes when he is Treasurer in the Association.

Q. You wouldn't know whether or not there was a bank account in the name of the Chinese Chamber of Commerce of record in the Valley National Bank at the present time, would you?

A. We don't have one now.

(Testimony of Henry Gong.)

Q. You don't have it now. You don't know how long since they have had it?

A. I don't know.

Q. When there was an account, did you authorize the opening of it, or one of the officers of the Association, or do you recall?

A. Well, we always keep some money in Kok Si's place because lots handy to keep money, and when we get a little extra money we keep in bank.

Q. You don't have an account, then?

A. We don't have any more now, we used all the money.

Q. And was it closed, do you know?

A. I think about one year ago.

Q. About a year ago. Do you remember how much there was in the bank during that—— [80]

A. I think around about a thousand dollars.

Q. Do you know whether it might have as much as \$1400? A. I don't know.

Q. In 1941, do you know whether there was——

A. I don't know.

Q. You don't know. If the bank records should show there was as much as \$1400 between various times from April, 1941, until the 31st of December, 1945, that would be correct, would it?

Mr. Flynn: Well, this witness can hardly answer that question, if the Court please.

The Court: He doesn't know anything about it.

Mr. McAlister: Let me ask another question, then: Do you know whether or not you signed an

(Testimony of Henry Gong.)

account card with the Valley National Bank so that you could sign checks?

A. Yes, I have to take four men to sign it. Yes, I am one that signed them.

Q. You are one that could sign them?

A. Yes.

Q. And Gee Sing? A. Yes.

Q. And Henry Yen? A. Yes.

Q. And Tony Kim, that is your Secretary, or he was? [81] A. Yes.

Q. And you say you have not examined the books of the Chinese Chamber of Commerce yourself personally? A. What?

Q. You have not examined the account books that Kok Si kept yourself? A. No.

Q. You stated, I believe, that Kok Si had been Treasurer of the Chinese Chamber of Commerce since it was organized here, as far as you know?

A. Been changed two or three times, but I don't know.

Q. Do you know who took care of the funds during 1941 and 1942 while he was in prison serving a narcotics term? A. I don't remember.

Mr. McAlister: You don't remember who kept the funds or kept the records. That is all.

Mr. Flynn: That is all.

(The witness was excused.)

Mr. Flynn: Mr. Lung.

YUEN LUNG

was called as a witness on behalf of the plaintiffs, and being first duly sworn, testified through the Interpreter as follows: [82]

Direct Examination

By Mr. Flynn:

Q. Will you state your name, please?

A. Yuen Lung.

Q. Where do you live, Mr. Lung?

A. 1023 East Jefferson.

Q. What is your occupation?

A. Merchant.

Q. Are you also a principal of the Chinese School of Phoenix. A. Yes.

Q. How long have you been principal of that school? A. Since 1932.

Q. Where is that school located?

A. 128 Second Street.

Q. How long has that school been in operation?

A. 14, 15 or 16 years.

Q. And what is the purpose of that school?

A. To teach our Chinese boys and girls the Chinese language.

Q. I understand that these Chinese boys and girls in the different communities attend an American school, but they receive their Chinese education by attending this school, is that correct?

A. Yes.

Q. How many teachers do you have, Mr. Lung?

A. Used to be two, and during the war there was only one.

(Testimony of Yuen Lung.)

Q. How is that school financed?

A. The original capital donated by Chinese people, and later expenses were furnished by tuition from the students and through donations.

Q. In October, 1945, who was acting as Treasurer for that Chinese School of Phoenix?

A. Kok Si.

Q. Did he have any money in his possession belonging to the Chinese School of Phoenix Association in October, 1945? A. Yes, \$1500.

Q. Who delivered him that money, if you know?

A. I delivered it to him.

Q. Do you know where that money is now?

A. I turned this \$1500 over to Kok Si, and it was in his keeping.

Q. Have you ever gotten that \$1500, or any portion of it back? A. No.

Q. And that \$1500 belonged to the Chinese School of Phoenix Association? A. Yes.

Q. It didn't belong to Kok Si? A. No.

Q. Or any part of it?

A. It belonged to the school.

Q. He was keeping the money as Treasurer for the Association, is that correct?

A. Yes, I turned it over to him.

Q. Do you know where Kok Si kept that money?

A. I turned it over to him and he kept it, but I don't know where.

Mr. Flynn: That is all.

(Testimony of Yuen Lung.)

Cross-Examination

By Mr. McAlister:

Q. How long have you lived in Phoenix, Mr. Lung? A. 36 years.

Q. And you have been principal of the school since 1932? A. Yes.

Q. Is the school running at the present time?

A. No, the teacher has been away and I have been unable to obtain another one.

Q. How long ago was that?

A. Approximately three or four years.

Q. And it has not operated, then, since his death, or her death? A. No.

Q. How often was this money collected for the school? [85] A. About once a year.

Q. When was the last money collected, do you know?

A. I don't remember the exact time. There had been money coming in from the school children all the time while it was in operation.

Q. Has there been any collected since the teacher died? A. No.

Q. During its operation, how much would you collect during the average year?

A. It would amount to thirteen to fifteen hundred dollars at time, and it would amount from twenty-five to twenty-five to twenty-seven hundred dollars at times.

Q. How much was the teacher paid?

(Testimony of Yuen Lung.)

A. Used to be \$75 a month, and towards the latter part of—while the school was in operation it was raised to \$125 a month.

Q. Who paid the teacher?

A. He would take the money if there was money from the books that he kept, and if there wasn't enough, Kok Si would pay it.

Q. In other words, he would pay it out of his own pocket—

A. I will explain that. The school teacher would take the money from his own fund to pay himself, and whenever there wasn't enough, he would get it from Kok Si. [86]

Q. Then Kok Si had a reserve fund, is that right? A. Yes.

Q. The students would bring in money every week or every month, and the teacher would collect it? A. That is right.

Q. Did the Association back this school, or what?

A. Me and Mr. Toy and Mr. Yee F. Singh, and Kok Si, the whole bunch would back the school up.

Q. Did they have any organization at any time, or was this just informal?

A. Yes, there was an association.

Q. Was Kok Si treasurer of that association?

A. Yes.

Q. Did he always keep the records—did he?

A. Yes.

Q. Is that the record book you have with you?

A. This record book was kept by the school teacher.

(Testimony of Yuen Lung.)

Q. Kept by the school teacher, the one that died?

A. Yes.

Q. When was the last entry made in that book?

A. August.

Q. August of this year? A. 1943.

Q. How long have you known Kok Si?

A. 17 or 18 years.

Q. Did you frequently go to his office on those [87] matters? A. Very seldom.

Q. You don't know of your own knowledge whether he kept the school money?

A. I turned it over to him. I presume he kept it in his safe.

Q. Do you know when he went back to China?

A. A few months ago.

Q. You don't know whether or not he had any money with him when he went, do you?

A. I don't know. I asked him for this money and he told me all of the money was taken by the Government.

Q. You don't know whether he had any place where he kept money besides that safe?

A. No.

Q. Did he ever show you the books of the school?

A. No, he never showed them to me. He would just show them to the school teacher. The school teacher showed them to him.

Q. That record you said was kept by the school teacher, was that record kept during the time Kok Si was in prison on that narcotics charge?

A. He was here.

(Testimony of Yuen Lung.)

Q. Kok Si was here. Do you remember the time when he was in prison? A. When? [88]

Q. That is what I am asking you, if you remember the time, 1939 and '40?

A. Yes, I heard about it.

Q. '41 and '42, I believe, is the correct time. Are you going to offer this record in evidence, Mr. Flynn?

(No response from Mr. Flynn.)

Mr. McAlister: No further questions at this time. We might want to put that book in evidence, we don't know.

The Court: All right, we will suspend until two o'clock.

(Thereupon a recess was taken at 12:00 o'clock noon.)

January 15, 1947, 2:00 o'Clock P.M.

All parties, as heretofore noted by the Clerk's record being present, the trial resumed as follows:

Mr. Flynn: Your Honor please, in the taking of the deposition there were some exhibits marked for identification, being Exhibits—Plaintiffs' Exhibits A, B, C, D, E and F, which were marked for identification by the witness Kok Si in the deposition, and which we introduced in evidence when the deposition was taken. I'd like to introduce those in evidence as a part of the deposition. I think as a matter of procedure they go in anyway with [89]

the deposition, and which is explanatory in the reading of the deposition. I offer them for what they are worth. They are accounts. I think there will be some additional testimony, and perhaps some stipulations on the variations of the accounts in some respects in the five causes of action. At this time I make that offer.

Mr. McAlister: We have no objection to them being admitted on that ground.

The Court: All right.

(The documents were received and so marked.)

Mr. Flynn: With that, if the Court please, we rest. [90]

DEFENDANT'S CASE

January 14, 1947.

Mr. McAlister: Mr. Harman.

W. J. HARMAN

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. McAlister:

Q. Will you state your full name?

A. W. J. Harman.

Q. What official position, if any, do you hold with the Treasury Department?

A. Supervising custom agents, which is custom agency district with headquarters at El Paso, Texas.

Q. How long have you held that position?

A. Since I have been in El Paso, since 1942, January 1st.

(Testimony of W. J. Harman.)

Q. And you were in that position in October, 1945? A. Yes, sir.

Q. And in connection with that position, you were in Phoenix at that time?

A. Yes, sir; I was.

Q. Did you have occasion in connection with the narcotics investigation to make the arrest of Kok Si? A. Yes; I did. [91]

Q. At his place of business on East Madison Street? A. Yes, sir.

Q. We might save time if you will briefly describe the details of that, Mr. Harman.

A. We had warrants for Mr. Kok Si's arrest and some other Chinese. We went to his place of business about, between seven-thirty and eight o'clock on the night of October 11th, and he was in his place of business, and placed him under arrest, and he was sitting—he was first out in front. There is a little place, a small room, and it has a counter on one side, and in back there is a little, small office, and he walked back in there and sat down in the chair, and we were looking around the office and asked him if—to open his safe, and he said the safe was open, so I pulled the door open and it was stacked full of money. It was a small safe, probably, about, I should say, 24 inches wide, and about 36 inches high, approximately, maybe a little bit smaller, and there were three or four compartments in the safe, and in the bottom part there was a lot of packs of coins of various denominations, and the whole thing in the back was packed full of

(Testimony of W. J. Harman.)

money, and we took the money out and put it in the box and brought Mr. Kok Si up to the Narcotics Office up in the Federal Building, and Mr. Vader and myself counted it for Mr. Kok Si. Mr. Vader is Assistant Supervising Agent. [92]

Q. And who else was present?

A. Who else was present?

Q. Yes. A. At the office?

Q. Yes.

A. Well, Mr. Talent and Mr. Smith—Mr. Earl Smith, and either one or two of the Wongs, maybe three of them, I am not sure whether the three of them, sons of the older man. I am not sure whether he was there or not.

Q. Kok Si was there?

A. Yes, he was there.

Q. You counted the money in his presence?

A. We counted the money in his presence and told him how much it was, and it would be counted, and asked him if that was correct, and he said that as far as he knew, it was.

Q. How was this money located in the safe when you found it, Mr. Harman?

A. It was stacked in the back of the part of the safe, full on the shelves. I forget if there was four or five compartments there, and each one was packed full of money of various denominations, but, of course, the smallest bill was a dollar bill and the highest was a thousand dollar bill.

Q. Was the bundle packed in packages? [93]

(Testimony of W. J. Harman.)

A. There were only one or two packages with rubber bands. Most of it was stacked in big stacks and not packaged at all.

Q. Was there any notation or anything fastened to any of the packages? A. No, sir.

Q. I understand that in making an investigation in narcotics cases that the Government, on occasion, would use some marked money.

A. We did use, I think it was \$8,650 over a period of several months. I think it started in March, 1945, and extended up until October.

Q. And in checking this money did you find any of that marked money?

A. We found \$3100 mixed up in that money of the money we had used.

Q. Was it in any one bundle?

A. No, sir. There were several \$100 notes in one package, in between one of these spaces, and the rest of it was mixed up all around. There was no particular order at all as far as we could tell.

Q. There were no notations in or on the stuff concerning the——

A. There were no notations at all. The only money that was packaged at all was a few—I think there was one package of \$500 bills with a rubber band around it, [94] and there was another package with a rubber band, but there was no labels on the money at all.

Q. At the time you were counting it there in Kok Si's presence, did he make any statements about the ownership of the money?

(Testimony of W. J. Harman.)

A. No, he said nothing at all. He just sat there and watched us count, and the only thing he said, we asked him if that was the correct amount, and he said as far as he knew. That is all he said.

Q. You didn't find any opium in that safe, did you? A. No, we did not.

Q. That was in another location. I think that is all.

Cross-Examination

By Mr. Flynn:

Q. Mr. Harman, I believe you stated the Supervisor of Customs Headquarters was at El Paso, is that correct? A. That is correct.

Q. After you counted the money and ascertained the correct amount, did you give Kok Si a receipt or any memorandum indicating how much you had taken? A. Yes, sir.

Q. Do you know where that receipt is?

A. I haven't the slightest idea.

Q. Do you recall the amount that was taken?

A. I haven't the records. The only thing we put on the receipt was the money, which I think it was something over \$32,000.

Q. It was in excess of 30,000, as best your memory serves you?

A. I am not sure of that amount, but I know it was over 30,000.

Q. As far as your record is concerned, and did that include the Cashier's check that we have introduced in evidence as Plaintiff's Exhibit A?

A. The amount I am talking about is nothing but cash.

(Testimony of W. J. Harman.)

Q. But you didn't include this?

A. The amount of cash. I don't remember just exactly what it was including the checks.

Q. As far as the cash is concerned, then it exceeded 30,000, to the best of your recollection, at that time?

A. I think it was 32,000. I think the records will show. I am sure it was in excess of \$30,000.

Q. What disposition did you make of that money?

A. We turned it over to the Internal Revenue.

Q. Where it is now. And what was done with it you don't know?

A. I haven't the slightest idea.

Q. In addition to the \$30,000 in cash and the Cashier's check there, was there any other securities or—

A. There was some United States Government Bonds, I [96] have forgotten now the amount. We had a record of this too, and then in the safe there was also a few Chinese War Bonds, and over in the desk on the other side in the office there were a great number of Chinese War Bonds, or what we understood to be Chinese War Bonds, which we did not take, left them there.

Q. You left the Chinese War Bonds and took the United States Government Bonds?

A. As I recall, we took those and had them at the office at the same time we had the money.

Q. Do you remember how many there were; would you say four or five, or two or three?

(Testimony of W. J. Harman.)

A. As I recall, there was about between five and seven thousand dollars worth, but I am not sure how much they were. We had a record of it. I don't know what it was.

Q. Do you have that record available—as near as you can recall, there was between five and seven thousand dollars in United States Government Bonds?

A. There were a number of Series E Bonds, and I think there was \$2000 of "G" bonds. I don't remember it.

Q. Did you notice the bonds; who the payee was on those bonds?

A. No, I think the majority of them were made to Ung Too Thet.

Q. Weren't one or two made to Sophie Dong?

A. There may have been. They weren't all the same person.

Q. They weren't all made to Ung Too Thet or Kok Si? A. I don't think so.

Q. Do you know what disposition was made of those bonds that did not show Ung Too Thet or Kok Si as payee? A. I don't know.

Q. You turned those over to the Internal Revenue Department?

A. I think they were. When I left they were at the office, I believe, the Narcotic Office.

Q. Did you get any books that night, Mr. Harman? You say Mr. Smith was with you. Did you pick up any books or memorandums, or did you pick up the cash?

(Testimony of W. J. Harman.)

A. There was a small box with just a few records. The records generally were left in his office.

Q. Do you know whether or not the agents later secured possession of his books?

A. I understand they did, but I didn't.

Q. You didn't yourself? A. No.

Mr. Flynn: That is all.

Mr. McAlister: That is all.

(The witness was excused.)

The Court: We will try and arrange to try this case at [98] ten o'clock in the morning.

(Thereupon a recess was taken at 2:00 o'clock p.m. of the same day. [100])

January 15, 1947, 2:00 o'Clock P. M.

Mr. McAlister: Earl Smith.

EARL SMITH

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. McAlister:

Q. Will you state your full name, please?

A. Earl A. Smith.

Q. What position, if any, do you hold with the Federal Government?

A. I am a Federal Narcotic Agent in the District of Arizona.

(Testimony of Earl Smith.)

Q. You were such during October, 1945?

A. I was.

Q. And as such Narcotic Agent, did you have occasion, along with Mr. Harman and others, to go to 117 East Madison Street in Phoenix, Arizona, on or about the 11th of October, 1945?

A. To 113 East Madison.

Q. 113? A. Yes, sir.

Q. At that time Kok Si, about whom there was considerable testimony, was arrested? [101]

A. Yes, sir.

Q. Was he arrested by you or one of the other agents?

A. He was arrested by Mr. Harman and another man.

Q. You were present at that time?

A. I was present shortly after his arrest.

Q. Were you present when Mr. Harman went into the back room where the safe was located?

A. I was in and out of the room where the safe was located, and Mr. Harman was there with Ung Kok Si.

Q. Mr. Harman, however, was the one who removed the money and other valuables from the safe?

A. Yes, sir.

Q. And after that what happened?

A. I later saw the money in our office at 211 Postoffice Building, in Phoenix.

Q. Who was present there?

A. Mr. Harman, Mr. Talent, and Captain Bert Smith, Customs Agent Vader, and myself.

(Testimony of Earl Smith.)

Q. Was Kok Si present? A. Yes, sir.

Q. At that time the money was counted?

A. Yes, sir.

Q. Do you know what the total amount of that was? A. \$32,000 and something.

Q. Was there some other bonds or—I believe there were some bonds mentioned yesterday? [102]

A. Yes, sir.

Q. Those were all itemized in the presence of Kok Si? A. Yes, sir.

Q. At that time did he make any statement concerning the ownership of either the money or the bonds, or anything else that was there?

A. I didn't hear him make any statement.

Q. Now, do you know what was done with the bonds? A. I returned them to Ung Kok Si.

Q. And he gave you a receipt, I believe, for those bonds? A. He did.

Q. How many were there?

A. 15, in denominations of \$1000, and one a denomination of \$500.

Q. How were they made out, Mr. Smith?

A. Made to Sing Lee Ong, Ng Too Sleek.

Q. How do you spell the last part of that?

A. N-g T-o-o S-l-e-e-k.

Q. Do you know whether or not that was another alias of Ung Kok Si? A. Yes, sir; it is.

Q. How many of the bonds were made out to him? A. Ten.

Q. You returned those to him, as I understand?

A. Yes, sir. [103]

(Testimony of Earl Smith.)

Q. And you had a receipt that was signed by him in the presence of Mr. Hickernell, the United States Commissioner, acknowledging receipt of those? A. Yes, sir.

Q. When was that dated?

A. November 20th, 1945.

Q. The money you received you turned over to the Internal Revenue Department, the Collector of Internal Revenue? A. I did.

Q. Do you know how much opium was seized at the time that arrest was made?

A. There was around 338 ounces.

Q. Do you know whether or not a tax was assessed on that opium?

Mr. Flynn: That is objected to, if the Court please. It is immaterial to the issues in this case.

The Court: He may answer.

A. Yes, sir.

Q. (By Mr. McAlister): Do you know the amount of it?

Mr. Flynn: The same objection.

The Court: The same ruling.

The Witness: \$8100.

Q. (By Mr. McAlister): That was taken by the Collector from those funds? A. Yes, sir. [104]

Q. I believe Mr. Harman testified yesterday that there were some marked bills in the money that was found. Did you observe any of those?

A. I observed the checking and finding of \$3100 of marked money.

(Testimony of Earl Smith.)

Q. Did you observe how they were located?

A. Sir?

Q. How were they located in the package of money that were found?

A. It was all through the entire amount of money brought up to the office.

Q. It was not just one or two bundles?

A. Well, it was in bundles, and among all the other bills.

Q. Did you know anything about, of your own knowledge, about Kok Si's business operations up until that time?

Mr. Flynn: That is objected to, if the Court please, it has no bearing on the issues in this case.

The Court: I don't know what you have in mind. I will have to sustain the objection.

Mr. McAlister: Well, I don't know even that he knows, your Honor. My reason for asking the question was, if he did have some knowledge, he might have some explanation for the reason that there was so much money around that place.

The Court: Well, I don't know. [105]

Mr. Flynn: Then it would be a conclusion of this witness at the outside.

Mr. McAlister: Well, if he doesn't know.

The Court: Well, I suppose the witness will testify that he was engaged in selling opium, and the Court will take judicial notice of that because he was convicted in this Court twice.

Mr. McAlister: That is all.

(Testimony of Earl Smith.)

Cross-Examination

By Mr. Flynn:

Q. I believe you said your name was Smith, is that right? A. Yes, sir.

Q. You counted the money there in the Postoffice Building at Room 211, and there was \$32,000 to the best of your memory, is that correct?

A. It was \$32,372.43.

Q. \$32,373.42? A. \$372.43.

Q. That was cash? A. Yes, sir.

Q. And then in addition to the \$32,372.43, there were 15 bonds in \$1000 denomination, and one bond \$500? A. Yes, sir.

The Court: That was \$15,500 in bonds? [106]

A. Yes, sir.

Q. (By Mr. Flynn): These 15 \$1000 bonds, I believe you testified, Mr. Smith, you returned to Kok Si as being his property?

A. Well, I returned them to him because they were seized from him.

Q. How about this \$500 bond?

A. Well, it was drawn to Ng Too Sleek, and I returned that, yes, sir.

Q. Are you sure, Mr. Smith, that those 15 bonds that you secured there were all made, or all had a payee which corresponded with one of the aliases used by Kok Si; do you have a list of them with the named payees in the bonds in your files?

A. They are right here.

(Testimony of Earl Smith.)

Q. May I see them?

A. Yes, sir, (handing document to Mr. Flynn).

Q. This Sing Lee Ong, is that another alias of Kok Si?

A. I don't know.

Q. What disposition was made of those bonds, the \$300,000 bonds issued to Sing Lee Ong?

A. Those were returned to Ung Kok Si.

Q. Those were returned like this—

A. Everything listed there they returned to Ung Kok Si. [107]

Q. You don't know whether Sing Lee Ong was an alias used by Kok Si or not?

A. No, sir.

Q. Those others you have listed issued to Ng Too Sleek, spelled N-g T-o-o S-l-e-e-k, you returned those to Kok Si on the evening in question?

A. Yes, sir.

Q. And this bond that was issued here to Chester Dong, or Mrs. Jennie Dong?

A. Yes, sir.

Q. That was returned, is that right?

A. Yes, sir.

Q. Then you took the \$32,372.43 and turned it over to the Internal Revenue Department; I mean you weren't concerned as to what disposition was made of it other than to turn it over to the Internal Revenue Department?

A. That is right.

Q. You don't know where that money is now, do you, Mr. Smith?

A. No, sir.

(Testimony of Earl Smith.)

Q. Your interest in the case was in the Narcotic Division? A. That is right.

Q. And in securing conviction on the evidence you had, and he pleaded guilty, and that is as far as you were concerned in the case, is that right?

A. Yes.

Q. So far as what the Internal Revenue did with the money or this case, as cash belonging to Kok Si as his personal property, you don't know, do you?

A. No, sir.

Q. Will you tell me, Mr. Smith, if you know, how you ascertained from any particular portion of the cash, or any bill of any particular denomination that was marked money so that you arrived at the conclusion he had \$3100 in amount?

A. Well, there were four purchases of narcotics made of \$2850, and most of the bills were denominations of \$100, so we got the serial numbers and the series of the bills so that we could check them against the money if we did find any in his possession, and we could identify it.

Q. That was the system used on the checking of the serial numbers and then tracing the bills through? A. Yes, sir.

Mr. Flynn: That is all.

Mr. McAlister: That is all.

(The witness was excused.)

Mr. McAlister: Mr. Whiteman. [109]

CHARLES MICHAEL WHITEMAN

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. McAlister:

Q. Will you state your full name, please?

A. Charles Michael Whiteman.

Q. Where are you employed?

A. Valley National Bank.

Q. In what capacity?

A. Acting Chief Clerk.

Q. As such, do you have general custody of all the account records?

A. I have access to them.

Q. Have you at our request—did you check your account records to find if there was an account in the name of the Chinese Chamber of Commerce?

A. I did.

Q. Was there such an account?

A. There was.

Mr. Flynn: Your Honor, we will stipulate for the purpose of saving time that the witness testified there was, but I think maybe I am confused, or perhaps Mr. McAlister is confused. I think the witness Henry Ong, on the witness stand this morning, testified the money [110] he had reference to, the \$4800, was kept by Kok Si. There probably was an account, and I think at the present time, though, the witness was confused, and I think the Treasurer of the Chinese Chamber of Commerce lives at Glendale.

(Testimony of Charles Michael Whiteman.)

Mr. McAlister: There seems to be considerable confusion in Mr. Ong's mind as to whether there was an account or not. He thought there was one. I was just trying to get this part of the record to shown when it was established.

The Court: All right, go ahead.

Q. (By Mr. McAlister): When was that account established?

A. The account was established April 28th, 1941.

Q. Who were the authorized signers on the account?

A. Three authorized signers, Yee F. Singh, Harry Gong and Harry Yen.

Q. That has never been changed?

A. Never been changed.

Q. There was no name of Ung Kok Si, Ong Too Thet, or Ng Too Sleek, no name like that was on there?

A. No, sir.

Q. Is that bank account still active?

A. It is still there, yes, sir; active and still in the bank.

Q. What has the balance been running, on an average?

A. Well, it has only, since 1941, one deposit made, [111] and one withdrawal, and the balance is now \$1425.25.

Mr. McAlister: That is all.

Cross-Examination

By Mr. Flynn:

Q. Who are the names on that card, Mr. Whiteman?

A. Yee F. Singh and Harry Gong.

(Testimony of Charles Michael Whiteman.)

Q. That is Henry Gong.

A. Henry Gong, and Harry Yen.

Mr. Flynn: That is all.

(The witness was excused.)

Mr. McAlister: Mr. Knapp.

FRED KNAPP

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. McAlister:

Q. Will you state your full name?

A. Fred Knapp.

Q. Where are you employed, Mr. Knapp?

A. First Phoenix Branch, First National Bank of Arizona.

Q. What position do you hold there, Mr. Knapp?

A. I am Chief Clerk.

Q. As such, you have general custody of the records [112] of the bank accounts?

A. Yes, sir.

Q. Is there a record in the bank account in your bank under the name of Sun Kwung Tong Company? A. Not at the present time, no.

Q. Has there been? A. Yes, sir.

Q. What time was that account active?

A. Well, it was opened on the 24th of September, 1924, and by Ng Too—looks like Theat—maybe it is T h e t, which, I could not tell. There is also

(Testimony of Fred Knapp.)

another signature on that card too. It looks like Y-c-s-s A-t, and that is Ng Too.

Q. How much does that show at the time the account was opened? A. \$200.

Q. How long has the account been active?

A. Up until April 18, 1946.

Q. Was there any change in the name of the authorized drawer?

A. No, not that I can find out.

Q. How much money was in the account at the time it was closed? A. \$324.76.

Q. How much was there in the summer of 1945?

A. Well, it ranged anywhere from \$3500 to \$4700. [113]

Q. That was in 1945?

A. Yes, the balance in 1945, there was \$472 at the last.

Q. What about 1944?

A. 1944, anywhere from 2800 to 3700. In between there, there was \$9000 balance on November 2nd, 1944.

Q. 1943?

A. Well, on February 18th, there was about 2200 and December 21st, 1600. In between there, it fell down to about \$211 at one time.

Q. What was the highest it was?

A. About \$7000 on March 22nd.

Q. Does that show any large withdrawals in single amounts there or not, Mr. Knapp?

A. Well, \$5000 withdrawal on March 23rd.

Q. 1943? A. '43, yes, sir.

(Testimony of Fred Knapp.)

Q. I didn't ask you that on the other two years on any large withdrawals. Do you notice any withdrawals?

A. Here is a \$2000 withdrawal on, I guess it is August 12th, 1944, and there was one of 2500 on November 10th, 1944, and \$2810 the same date; that is, 1944. 1945, there was a \$2000 withdrawal on July 12th, and \$4000 withdrawal on November 15th. That is in 1945.

Q. Let's go on and get 1942.

A. 1942. A small balance of \$328 on May 12th, and [114] a large balance of \$2016.78 on December 31st. That is in 1942, and apparently there was no large withdrawals. \$600 seems to be the largest one.

Q. Any large exchanges in 1941

A. There doesn't seem to be any action in 1941.

Q. 1940, the same?

A. 1940 we had action, yes.

Q. What was it?

A. 1940, we started out with January 4th, a balance of \$5900.73, and ended up on September 28th, 1940, with a balance of \$28.84, and we had one large withdrawal of \$4000 on December 26th, 1939, and—that is the previous—had one for 2000 on February 1st, 1940, and \$5527.50 on August 12th, 1940. There is a few others of a thousand.

Q. 1939.

Mr. Flynn: Your Honor please, this is quite remote in point of time, going back to 1939.

(Testimony of Fred Knapp.)

The Court: Yes, I don't know whether that would be much of assistance.

Mr. McAlister: Well, it is rather remote except to show he ran an active bank account all the time.

Mr. Flynn: I think it is admitted in the deposition of Kok Si that he had this account, he kept this account. I don't know what is the materiality of this particular testimony except in so far as the status of the account may have been concerned in October, 1945. I don't think [115] there is any issue that he kept the account. He testified in the deposition he had an account.

Mr. McAlister: He may have testified he had a slight account.

Mr. Flynn: On Page 31, Charlie.

Q. (By Mr. McAlister): What was the balance of his account on or about October 11th, 1945?

A. \$4472.26.

Mr. McAlister: I think that is all.

Cross-Examination

By Mr. Flynn:

Q. Your account card shows, does it not, when that account was opened that there were two individuals to sign that account, and I think you said Ng Too Sleek and somebody named Yec Thet? Is that right? A. That is right.

Q. Has there been any change in the status of account with those names on it? A. No, sir.

Q. From the time of its creation to date?

A. No.

(Testimony of Fred Knapp.)

Q. Your records show that he made these deposits and withdrawals that you have testified to?

A. Who is the party that made them? Oh, I don't know.

Q. You don't know whether it was Ng Too Sleek or [116] Yee Thet that made those?

A. No.

Q. You are from the Phoenix National Bank, is that correct?

A. First National Branch.

Mr. Flynn: That is all.

Mr. McAlister: That is all.

(The witness was excused.)

Mr. McAlister: Freeman Stone.

FREEMAN STONE

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. McAlister:

Q. Will you state your full name?

A. Freeman Stone.

Q. Where are you employed?

A. First National Bank of Arizona, Head Office.

Q. In what capacity?

A. Assistant Cashier.

Q. As such, you have custody of the records of the bank accounts? A. I do.

Q. Do you have in your records any record of an account in the name of Sun Kwung Tong Company? [117] A. Yes.

(Testimony of Freeman Stone.)

Q. When was that account opened, Mr. Stone?

A. The account opened on January 2nd, 1931.

Q. By whom? A. By Ng Too Sleek.

Q. Is that the only name?

A. That is the only signature on the account.

Q. Has there been any change on it since the existence of that account? A. No.

Q. Is that account still active?

A. The account is now closed.

Q. When was it closed?

A. The account closed on April 16th, 1946.

Q. How much was in it at that time?

A. \$355.44.

Q. How much was in it in October, 1945?

A. At the end of October, 1945, a balance of \$3154.39.

Q. Do you have any balance for about the 10th or 11th of October?

A. On the 11th of October, the balance was \$5985.89.

Q. What was the highest balance during the year 1945?

A. The highest balance in the account was \$6421.85 on August 6th, 1945.

Q. In checking back through it, has there been any unusually high balances in that account since 1940? [118]

A. That balance in August, 1945, appears to be the highest balance during that period.

Q. Do you know whether that account has been reopened or not by anyone else?

A. If it has been reopened by anyone else?

(Testimony of Freeman Stone.)

Q. Yes. A. Not to my knowledge.

Q. Do your records show the issuance or the cashing of a check in the amount of \$1256.50 on or about the 13th of October?

A. According to our records there was a check for \$1256.50 paid on this account on October 13th, 1945.

Q. Was there one in the amount of \$1500 on the 16th? A. Yes.

Q. If I understand it, those cancelled checks were——

A. According to our records, the cancelled checks were mailed out.

Mr. Flynn: I don't understand the materiality of these cancelled checks and to whom they were mailed.

Mr. McAlister: We can't say from the record who they were made to.

The Court: Do you keep a close check on the cancelled checks in your bank?

A. We keep a picture in the bank. We reproduce and secure a photostatic copy of the checks.

Q. (By Mr. McAlister): How long will it take you to do [119] that if we needed several of them?

A. Possibly not over two days.

Q. You would have to run the reels back, would you? A. Yes.

Mr. McAlister: I think that is all.

Mr. Flynn: No questions.

(The witness was excused.)

KENNETH Q. N. WONG

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. McAlister:

Q. Will you state your full name?

A. Kenneth Q. N. Wong.

Q. Where do you live, Mr. Wong?

A. I live in New York City.

Q. By whom are you employed?

A. By the Customs Agency Service, District No. 2, New York City.

Q. You have been employed by the Customs Service for how many years?

A. Well, there was about nine years with the Service in China, and then about four years in New York City, with two years in the Armed Services.

Q. Two years duty in the Navy?

A. Yes, sir.

Q. You are familiar with the Chinese language?

A. I am, sir.

Q. Chinese writing and characters?

A. Yes, sir.

Q. And I believe last summer you were out here and examined these books that have been introduced as evidence or as exhibits in this case?

A. Yes; I did.

Q. And you checked the records and tried to come to a total amount shown due these various organizations about which the testimony has been given?

(Testimony of Kenneth Q. N. Wong.)

A. First I translated from Chinese into English page by page, and then while I was in El Paso they told me to arrange it so we could get a total. That is what I did too.

Q. Can you find the record there for the Chinese Chamber of Commerce?

Mr. Flynn: It is marked Exhibit B.

A. This is the one, (showing document).

Q. (By Mr. McAlister): Now, then, the plaintiffs have alleged in this complaint that there was—that Kok Si was holding a sum approximately \$800 for them, and that that is reflected in their books. Did you check the books to find out what that balance would show he owed [121] them?

A. Well, this balance is \$838.40.

Mr. Flynn: \$838.40? A. Yes, sir.

Mr. Flynn: Is that correct? A. Yes, sir.

Q. (By Mr. McAlister): That is the figure you arrive at from using that book there?

A. From the book.

Q. When was that last entry made on that book there, what year?

A. Well, there is no date, entry of the balance put in. There is a page torn between here.

Q. Page torn? A. Yes.

Q. What is the nearest date to it, identify it?

A. There is November 27th, I think, '39.

Q. November 27th, 1939?

A. That is the last date shown.

Q. Can you tell how accurately that was kept by bookkeeping methods or not, Mr. Wong?

(Testimony of Kenneth Q. N. Wong.)

Mr. Flynn: Just a minute. If the Court please, that calls for a conclusion and an opinion of the witness.

Q. (By Mr. McAlister): Are you familiar with Chinese bookkeeping systems?

A. Yes, I used to examine a number of these books in [122] China.

Q. In Hong Kong? A. Yes, sir.

Q. You examined them for the Customs there?

A. Yes, sir.

Mr. Flynn: The same objection, your Honor.

The Court: Well, he can tell whether they added correctly, can't he? Maybe that is what he means by accurate. He can tell how accurately they have been kept.

Mr. McAlister: If he is familiar with the system, why, he knows.

Mr. Flynn: Well, in any event, it would be a conclusion.

Mr. McAlister: Well, any expert will make a conclusion.

The Court: I will have to rely on somebody's conclusion. I can't read it.

Mr. Flynn: Well, he has not qualified the witness as an expert.

Q. (By Mr. McAlister): How much experience have you had with bookkeeping, Mr. Wong, and accounting?

A. I studied bookkeeping when I was in school. I never did any work actually.

Q. That is the American School you studied in?

A. Yes, sir. [123]

(Testimony of Kenneth Q. N. Wong.)

Q. And you worked at it?

A. And I also worked in the Physical Demonstration Building.

Q. How much of that nine years in China did you spend working at bookkeeping and checking books and records?

A. Well, we just checked the books against the invoices, that is all.

Q. Did you become familiar with the system while you were doing that? A. Oh, yes.

Q. Have you checked in the United States any bookkeeping in which Chinese characters were used?

A. These kind of books, you mean?

Q. Yes. A. No, this is the first one.

Q. That is right, you just got back from the Navy this past Spring, is that right? At any rate, November, 1939, balance is the last shown in there as far as the Chinese Chamber of Commerce is concerned? A. Yes, \$838.40.

Q. There is nothing in these books to show where the moneys might be, or anything like that?

A. No, sir.

Mr. McAlister: Do you want to ask any questions on any one of them? [124]

Mr. Flynn: Oh, you mean on each individual? If the Court please, we will accept the figure of \$838.40 and ask that our pleadings be amended accordingly, as far as the Chinese Chamber of Commerce is concerned.

The Court: All right.

(Testimony of Kenneth Q. N. Wong.)

Mr. Flynn: We will pick up \$38.40 on that, and we will drop some later, if the Court please.

Mr. McAlister: Let's see, we don't have the book for the Wing Mae School.

The Witness: Oh, yes.

Mr. McAlister: Wing Mae School, we have it?

A. Yes, we found it.

Mr. Flynn: That is Exhibit C, yes.

Q. (By Mr. McAlister): You have checked those figures, have you? A. Yes, sir.

Q. When does it show that account was started and when was the last entry?

A. Well, according to this, it started with 1936, in February.

Q. And the last entry was made when?

A. The last date is 1943, April 27th, the last date.

Q. Those three pages constitute the account of the Wing Mae School? A. Yes, sir.

Q. And that shows a balance to the credit of the [125] School in the amount of \$1914, is that right? A. \$1914.

Q. That is as of April 28th, 1944?

Mr. Flynn: 1944?

Mr. McAlister: I think that was the date of the last——

A. Yes, that is the last date here.

Q. Is that going to the account in any great detail, or does it just show the general sums, Mr. Wong?

(Testimony of Kenneth Q. N. Wong.)

A. Well, it shows donations and then the remittance to China and the expense of sending the remittance to China.

Q. It does not show where those donations are from? A. No, just total donations.

Q. It does not show where the money is located? A. No, sir.

Q. Is there anything on there, any signature anywhere of Kok Si's any place?

A. No, sir; I don't see it.

Q. Now, let's see, you have the records there of the Chinese Relief—

Mr. Flynn: May I ask a question of the witness on that before you put that book away?

Mr. McAlister: Yes.

Q. (By Mr. Flynn): Your last entries there, I believe, you said, was April 27th, 1943, is that correct? [126] A. Yes; that is the date.

Q. It is \$1914.40?

A. Well, at that date. It does not make that the balance, but that is the last date shown.

Q. What is the last balance shown on the last entry? A. A balance of \$1914.

Q. Even? A. Yes, sir.

Q. Is there also a notation in that book there to the effect that in April \$1914 had been sent to New York for transmittal to China and had been returned?

A. No., that is not the amount. \$1940 is the balance.

Q. The balance? A. Yes, sir.

(Testimony of Kenneth Q. N. Wong.)

Q. Was there any notation there showing that money just previous to that had been sent to New York for transmittal to China and had been returned? A. Yes, sir.

Q. How much? A. \$850.

Q. On what date does it show?

A. That was April 28th, 1944, and here is the notation here, that the bank in New York returned this last remittance because of transportation difficulties.

Mr. Flynn: If the Court please, we will accept that figure of \$1914 and ask that our pleadings in respect [127] to the Wing Mae School be amended accordingly.

The Court: All right.

Q. (By Mr. McAlister): Do you have the books of the Chinese War Relief Association, Exhibit E or D? When does that show that the account was started, Mr. Wong?

A. Well, the first statement in this account book, 1938, July.

Q. And that goes on down through until what is your last entry in there?

A. The last date I see in this book is the month of October, 1945.

Q. And you have some additional sheets there that shows some collections after that, is that right?

A. Yes, sir.

Q. And have you totaled all of those figures?

A. Well, I think I totaled them after making the translation.

(Testimony of Kenneth Q. N. Wong.)

Q. Yes, that is what I mean, and according to the way those records stand now, there was a balance there, according to your figure, of \$13,701.41, is that correct? A. Yes, sir.

Q. Now, you have gone over these books from July, 1938, until the last entry, have you, pretty carefully, checking each—does it show entries for every year during that time? [128]

A. No, they are quite jumbled up. If I recall, I think there is a year or two missing in this—1939, and then jumped up to 1942.

Q. There was no entries during those years of 1940 and '41—

A. I beg pardon, here is '40 here. There is no '41 in there, and then it is up to 1942.

Mr. Flynn: He was in Leavenworth then.

Mr. McAlister: He was somewhere. In checking through there on the remittances that were made, Mr. Wong, do you find a considerable number of items for local expense and entertainment of local Chinese and Cadets, or something like that? Do you want this (handing document to the witness)? In July of 1944, it showed an item of \$420 for a banquet at the Peking Restaurant?

A. Yes, sir.

Q. That was a banquet in September or August of 1944, \$500. That does not show who to. You checked those last sheets for expenditures, did you?

A. Yes, sir.

(Testimony of Kenneth Q. N. Wong.)

Q. Is there any item in there showing any expenditure for a banquet in October, 1945?

A. October, 1945? I don't see any.

Q. There is no entry showing that?

A. No. [129]

Q. Is there any way you could tell after examining these books, Mr. Wong, how regularly they were kept, or not, except for that period, of course, that he was away for three years? I only want to know if you know.

A. The dates are jumbled up a bit, so I straightened it out to strike that balance when I went to El Paso.

Q. That is, some of the dates are out of order?

A. Yes, sir.

Q. Were the entries more voluminous with more detail for some periods than they were for others?

A. Some of them were.

Q. Do all of the entries appear to be made in the same handwriting, as far as you know or can tell, or can you tell in Chinese handwriting?

A. Well, I am not so good in handwriting.

Mr. McAlister: That is all.

Cross-Examination

By Mr. Flynn:

Q. Mr. Wong, the last entry with reference to the Chinese War Relief Association that you found, and thereafter computing the amounts on the separate sheets and subtracting the expenditures donated on the different sheets, you arrived at the figure of \$13,701.41? A. I think so.

(Testimony of Kenneth Q. N. Wong.)

Mr. Flynn: Well, if the Court please, we will accept [130] that figure of \$13,701.41, and ask that our pleadings be amended with reference to the Chinese War Relief Association accordingly.

The Court: Very well.

Q. (By Mr. Flynn): Now, you have no books there which reflect the status of the account in the Chinese School in Phoenix, do you, Mr. Wong?

A. At that time, no.

Mr. Flynn: That is all.

Mr. McAlister: That is all.

(The witness was excused.)

Mr. Flynn: If the Court please, this morning our witness testified that out of this \$1900 belonging to the Sun Kwung Tong Company which he testified was in the possession of Kok Si at the time of the arrest, or until the arrest, that approximately \$400 of that was Kok Si's money for shares of stock which were issued to him and which he subsequently purchased, if my memory serves me correctly, and, consequently, I would like to ask that the Sun Kwung Tong Company's pleadings be amended to substitute the figure of \$1500 for \$1900, which would subtract \$400, and which the testimony shows to be Kok Si's interest in the corporation or association, and ask that the pleadings be amended accordingly. Your Honor please, may I have two minutes? I think we will stipulate and save a little time. I want to talk [131] to one of the witnesses.

Mr. McAlister: Counsel will stipulate that the

amount of \$2000, which was the cost of the banquet held on October 10th, 1945, was not shown on the records, and that it was paid from the Chinese War Relief fund, which would reduce the balance by that \$2000 from \$13,000; that is the balance shown on the records.

Mr. Flynn: That would reduce that Chinese War Relief Association to \$11,701.41. I have conferred, if the Court please, with Mr. Singh. I believe that is correct, that the \$2000 banquet was to be paid for out of the Chinese War Relief Association, and though the evidence indicates that the check was drawn on the Sun Kwung Tong Company, why, I am informed that, perhaps, that was the Chinese War Relief Association's money.

(Thereupon a discussion was had off the record.)

Mr. McAlister: Mr. Brewer.

BENNETT Y. BREWER

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

By Mr. McAlister:

Q. Will you state your full name, please?

A. Bennett Y. Brewer.

Q. Where are you employed? [132]

A. I am employed as Special Agent for the Intelligence Unit, Treasury Department.

Q. How long have you been with that Department?

A. Since December 30th, 1945.

(Testimony of Bennett Y. Brewer.)

Q. Previous to that time were you working in the Collector's office here? A. Yes.

Q. Did you have occasion to compute the assessment of income taxes for Ung Kok Si for the years 1943 and 1944, I believe? A. I did.

Q. After computing that, from information that was available to you, did you determine the total amount of taxes?

Mr. Flynn: Now, just a minute. If the Court please, I don't think that portion of the testimony is admissible in this case. The only issue, as I see it here, is the question of whether or not this money belonged to Kok Si or whether or not he was holding it as Treasurer or Trustee, or what fiduciary capacity he was holding it for, for these other organizations. What happened to the money after it was seized was assumed entirely by the Internal Revenue Department that the money belonged to Kok Si and, consequently, I suppose they took it for income tax purposes, and whatever taxes that may have been assessed against him, [133] that has no bearing on the issues in this case, because if the money was not his—I mean if it was his, it makes no difference what happened to it. If the money was not his, then they had no right to take it, consequently, whatever the Internal Revenue Department did is another question. We are not concerned in that in this lawsuit; the question as to his income taxes, whatever the assessments or penalties they charge against him by virtue of his failure to file for previous years, and income, all of those matters

(Testimony of Bennett Y. Brewer.)

are extraneous to this matter, and it certainly de-
horts to this matter. The only issue, as I say, is the
question of whether or not this money belonged to
Kok Si when it was taken. If it didn't belong to
Kok Si, it was an unlawful seizure and amounts to
conversion. I think the evidence is adequate before
the Court to show that this money was turned over
to Kok Si by these different organizations.

(Thereupon argument between Court and
counsel.)

The Court: You can argue this later. You are
talking about him encumbering the record.

Mr. Flynn: That is all a part of the case, if
the Court please.

Mr. McAlister: I agree with Mr. Flynn, that
issue on the amount of tax is not material, but I
just want to put him on to show the reason we are
holding this.

The Court: He can testify to that and let it
go at [134] that.

Mr. McAlister: In other words, those funds are
being held by the Collector under the presumption
that they were moneys belonging to Kok Si and
they were seized to take care of the income tax de-
linquencies, is that correct? A. That is right.

Mr. Flynn: If that is the case, why—no
questions.

Mr. McAlister: That is all.

(The witness was excused.)

Mr. McAlister: I believe that is all the testimony we have.

Mr. Flynn: We have nothing further, if the Court please.

The Court: Do you have any rebuttal?

Mr. Flynn: No rebuttal.

The Court: All right. What do you want to do, submit a memorandum on this?

Mr. McAlister: Now that the facts are out, maybe we can find some detailed law on it. I know I can find some general law on it.

The Court: All right, what time do you want?

Mr. Flynn: Well, I'd like ten days if the Court thinks a memorandum is necessary. I'd like ten days to submit a brief or memorandum in support of our [135] position.

The Court: All right, do you want ten to reply?

Mr. Flynn: About ten, ten and five.

Mr. McAlister: I think that will be all right, although I have to be in San Francisco.

The Court: You will probably be up asking for an extension. I will take judicial notice of that now.

Mr. McAlister: Okay.

(Thereupon the trial was ended at 3:30 o'clock, p.m.) [136]

I hereby certify that the proceedings had upon the trial of the foregoing cause are contained fully and accurately in the shorthand record made by me thereof, and that the foregoing 136 typewritten pages constitute a full, true and accurate transcript of said shorthand record.

/s/ LOUIS L. BILLAR,
Official Reporter.

In the United States District Court
for the District of Arizona

No. Phoenix 804

In the Matter of

HENRY ONG, President of Sun Kwung Tong Company, HENRY GONG, President of Chinese Chamber of Commerce of Phoenix, Arizona, FRANK ONG, Chairman of Wing Mae School in China, YEUN LUNG, Chairman of Chinese School, FRED WONG, Chairman of China War Relief Association, GEE SOOT HONG, YEE WO & COMPANY, TOM NOM, and FONG W. YUEY.

DEPOSITION OF UNG TOO THET,
ALIAS ONG KOK SI

Appearances:

For the United States Government: Mr. Charles McAlister, Assistant United States Attorney.

For the Petitioners: Messrs. Jerman & Flynn.

Phoenix, Arizona, February 26, 1946

Be It Remembered that pursuant to the annexed Order for Taking Deposition, the deposition of Ung Too Thet, alias Ong Kok Si, was taken before Louis L. Billar, a Notary Public in and for the County of Maricopa, State of Arizona, in the Petty Jury room of the United States Court House, commencing at the hour of two-thirty o'clock, p.m., on the 26th day of February, 1946.

The petitioners were represented by Messrs. Jer-
man & Flynn.

The United States Government was represented
by Charles McAllister, Assistant United States At-
torney.

The following proceedings were had :

Mr. Flynn: The record may show that this depo-
sition is taken pursuant to the Rules of Civil Pro-
cedure, Rule 27. It is a deposition taken prior to
the filing of an action in Cause No. Civil 804 Pho-
enix, taken pursuant to the petition to take the
deposition, and the order signed pursuant to the
said petition by the Honorable David W. Ling,
Judge of the United States District Court in and
for the District of Arizona, on the 25th day of
February, 1946; that notice to take the said depo-
sition was duly served upon counsel for the United
States Government, being Frank E. Flynn, United
States Attorney, and Charles E. McAllister, Assist-
ant United States Attorney. Do you have any fur-
ther comments?

Mr. McAllister: No, except I appear for either
the Government or the Collector of Internal Reve-
nue, or both, depending on which official of the
Government may desire representation.

Mr. Flynn: I think the record may show, then,
that it is understood that an application was filed
on behalf of the clients for whom we represent at
this time to file an action wherein the United States
Government will be a party defendant. The appli-

cation was forwarded to the United States District Attorney in and for the District of Arizona, and it is my understanding such application was sent to the Honorable Tom Clark, the Attorney General of the United States Government, with request for leave to sue the United States Government, which was rejected upon the ground that the Attorney General did not have authority under the law to authorize the filing of said suit, and that this deposition will be taken for the purpose of use in an action to be filed against the Collector of Internal Revenue, Mr. W. P. Stuart, or such other Internal Revenue Agents, and Narcotic Agents, as can be determined to be later necessary parties defendant, and that the United States Attorney appears on behalf of such defendants at this time; right?

Mr. McAllister: That is correct.

Mr. Flynn: The firm of Jerman & Flynn appear in the deposition on behalf of the petitioners who will, in so far as we are able to ascertain at this time, be parties defendant in the action to be filed.

Thereupon Walter Ong was sworn by the deposition Notary to act as Chinese interpreter.

UNG 'TOO THET, alias ONG KOK SI was thereupon duly sworn on behalf of the petitioners, and testified as follows:

Mr. Flynn: Is there any objection to the form of the oath to the deponent?

Mr. McAllister: To the witness? No, I do not.

Mr. Flynn: The reason I asked you that, Charlie, it is my understanding that in this deposition any irregularities which may occur in the taking of the deposition is waived. If you should like to determine whether or not he understands the nature of the oath taken——

Mr. McAllister: Well, you might, just to make the record clear, you might ask him if he feels he is bound by an oath like that which you gave him. Will you ask him that, Walter, if he feels that he is bound by that oath that he just took, to tell the truth and nothing but the truth in this matter.

(The question was interpreted by the Interpreter.)

A. Yes.

Mr. McAllister: He does?

The Interpreter: That he will tell the truth.

Direct Examination

By Mr. Flynn:

Q. Will you state your name?

A. Ung Too Thet.

Q. Do you have any other names or name that you go by? A. Ong Kok Si.

Q. How do you spell that?

A. O-n-g K-o-k S-i (spelling).

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. Where do you live, Kok Si?

A. (The Interpreter): He understands where he lived back in China. That is not what you want?

Mr. Flynn: No, where does he live in the United States?

A. East Madison, 113 East Madison, Sun Kwung Tong Company.

Q. And is that located at 113 East Madison Street, Phoenix, Arizona? A. Yes.

Q. Were you living there on the 11th day of October, 1945? A. Yes.

Q. What, if anything, happened on that day?

A. Some officers were there and took some money away from me.

Q. Were you arrested on that day by the officers?

A. Yes, they came to the store and arrested me.

Q. Where did they take you?

A. They took me to the police office.

Q. Do you know the names of any of those officers that arrested you? A. No, I don't.

Q. As far as you know, they are agents of the United States Government?

A. I just knew they were officers. I don't know where they were from.

Q. I will ask you—were you charged with the violation of the Harrison Narcotic Act and the Import and Export Drug Act?

A. I don't know what I was charged for.

Q. Did you plead guilty to a violation of the Narcotic Act? A. Yes.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. And you were sentenced by the Court to spend five years in the penitentiary, at such penitentiary as may be designated by the Attorney General, and that sentence was suspended under condition that you leave the United States within 30 days from the 28th of January, 1946?

A. Yes.

Q. And you have made arrangements to secure passage to China? A. Yes.

Q. When do you expect to leave?

A. As soon as there is a boat available.

Q. From the information you now have, that will be within the next week or so?

A. It is very close. I don't know exactly when the time is, but it is any minute.

Q. Directing your attention to the 11th day of October, 1945, when the arrest was made, now, at the premises of 113 East Madison Street, did you have a safe? A. Yes.

Q. And at the time the arresting officers arrested you, did they take certain money out of that safe?

A. Yes.

Q. Now, at the time that arrest was made and the money was taken, did you have \$1900 belonging to the Sun Kwung Tong Company in your possession? A. Yes, it was in the safe.

Q. How did you get possession of that money, Kok Si?

A. It was put in trust with me, by the different parties that belonged to the Sun Kwung Tong Company.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. Did you have any personal interest in that money other than the safekeeping of it?

A. I never used that money at all. It was just put there in my trust.

Q. And you were holding the money for whom?

A. For the Sun Kwung Tong Company.

Q. Is the Sun Kwung Tong Company an Arizona corporation? A. Yes.

Q. Who composes the Sun Kwung Tong Company, Chinese merchants?

A. Yes, they are all Chinese.

Q. Do you have any books, or did you make any book entries when you got this money showing who it belonged to, the \$1900 I am talking about now?

A. Yes, the books appear.

Q. Do you have those books available?

A. Yes, the books are here.

Q. Can you get the books and show us the entries that were made as to when this \$1900 belonging to the Sun Kwung Tong Company was given to you?

(The books were presented.)

Q. (By Mr. Flynn): That reflects the fact that you were holding \$1900 for the Sun Kwung Tong Company, does it not?

A. Yes, because the names are right on there too.

Q. That \$1900 was in the safe on the night the arrest was made? A. Yes.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. And was that \$1900 taken by the arresting officers?

A. It was in the safe, so they took it.

Q. Do you know where that \$1900 is now?

A. No, I don't know where it is. They took it, that is all I know.

Q. Have you ever gotten it back, or any part of it? A. No.

Q. On the 11th day of October, 1945, the day the arrest was made, were you holding some money for the Chinese Chamber of Commerce of Phoenix, Arizona? A. Yes.

Q. Do you know how much that was?

A. About Thirteen or Fourteen Thousand Dollars.

Q. No, I am talking about the Chinese Chamber of Commerce.

A. Chinese Chamber of Commerce, approximately Eight to Nine Hundred Dollars.

Q. Where was that money when the arrest was made? A. It was in the safe also.

Q. What happened to that money?

A. The officers came in and took it.

Q. Did that money belong to you?

A. It belonged to the Chinese Chamber of Commerce. It was put in my trust.

Q. Do you know where that money is now?

A. The same people took it away. I don't know where it is now.

Q. Now, on the night that this arrest was made, did you have Cashier's Check No. 130459, dated

(Deposition of Ung Too Thet, alias Ong Kok Si.)
August 7th, 1945, in the sum of \$2500, drawn on the Bank of Kantong, San Francisco, California, payable to the order of Ong Kok Si, and signed by Gee Soot Hong?

A. Yes, they took a check given—put in my trust to purchase property on Second Street and Jefferson.

Q. Was that check in the safe the night that the arrest was made? A. Yes.

Q. And did the arresting officers take that check? A. Yes.

Q. Do you know where that check is now?

A. No, I don't know where it is. The same parties took that check also.

Q. Did you have any interest in the check, or any of the money belong to you?

A. No, I have no interest in the check. It was just given to me to apply on the purchase of a piece of property.

Q. On the night the arrest was made, did you have also a Cashier's check dated August 22nd, 1945, No. 500, in the sum of \$2500, drawn on the Kantong Bank, at San Francisco, California, payable to the order of the Sun Kwung Tong Company and signed by Yee Wo and Company, and Tom Nom, and Fong W. Yuey?

A. Yes, there was a check.

Q. Where was that check the night the arrest was made? A. In the safe.

Q. And what happened to that check?

A. The check—there was a letter also enclosed in the check in reference to that.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. Do you know where that check is now?

A. The same parties took it.

Q. Did any of that money belong to you?

A. No, it was just put in my trust.

Q. What were you holding it in trust for?

A. To purchase a piece of property on Second Street and Jefferson.

Q. Now, on the night the arrest was made, did you have \$1900 in the safe belonging to the Wing Mae School in China? A. Yes.

Q. Where did you get that money?

A. That money was put in my trust by parties responsible that went out to collect the money from different Chinese individuals.

Q. What was that money to be used for?

A. That money was to support a Chinese School back in China.

Q. Who delivered that money to you?

A. Frank Ong.

Q. On the night the arrest was made, did you also have \$1500 in your possession belonging to the Chinese School of Phoenix? A. Yes.

Q. Who delivered that money to you?

A. Yeun Lung.

Q. Is he the Chairman of the Chinese School in Phoenix, Arizona? A. Yes.

Q. Did you own or have any interest in that money?

A. No, it was just for the support of that school.

Q. And that was left with you for safekeeping?

A. Yes, it was.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. Was that money in the safe the night the officers arrested you? A. Yes.

Q. Did they take that money? A. Yes.

Q. Do you know where that money is now?

A. The same parties took it. I don't know where it is now.

Q. Now, on the night the arrest was made, the 11th of October, 1945, did you have approximately \$14,000 in money belonging to the Chinese War Relief Association of Arizona in a safe?

A. Yes.

Q. What happened to that \$14,000?

A. The same parties took it.

Q. Do you know where that money is now?

A. I don't know where it is now.

Q. Other than it was for safekeeping purposes, did you have any interest in that money?

A. It was just put in my trust. It was not my money.

Q. Who gave you the money?

A. It was turned in at various times by Mr. Fred Wong, who is Chairman of the Chinese Relief Association. He turned in the biggest part of it.

Q. Go back now—ask him if he can remember who turned in the money to him on the \$1900 of the Sun Kwung Tong Company he has testified to?

A. Henry Ong collected some from those various parties and turned it over to me.

Q. That is, the \$1900 of the Sun Kwung Tong Company money? A. Yes.

(Deposition of Ung Too Thei, alias Ong Kok Si.)

Q. And ask him if he can remember who turned over the \$800 belonging to the Chinese Chamber of Commerce of Phoenix, Arizona, to him?

A. Mr. Henry Gong.

Q. Is he the President of the Chinese Chamber of Commerce of Phoenix?

A. Yes, he was President at that time.

Q. Do your books reflect the \$800 belonging to the Chinese Chamber of Commerce of Phoenix, Arizona? In other words, do you have a bookkeeping entry showing you were holding that money for them?

Mr. McAllister: Just a second now.

A. Yes, he says it is kind of a small book there (indicating a number of books).

Mr. McAllister: Just a second. I don't like to object to it, but I think we ought to have a little voir dire to see how those books were kept and who kept them.

Q. (By Mr. Flynn): In the operation of this, or rather, the handling of these accounts that you have testified to, did you have a set of books?

A. Yes. All the books are here.

Q. Will you show us the entry where you received \$1900 for the Sun Kwung Tong Company?

A. It is the largest book in the bunch; has a blue binding to it.

Q. Ask him to point out the entry in it showing he got \$1900 from the Sun Kwung Tong Company.

A. It is right in the front page of the book.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Mr. McAllister: Let me ask him a few questions on voir dire.

Mr. Flynn: Very well.

Q. (By Mr. McAllister): Who kept these records? A. I did.

Q. You, personally, made those entries yourself?

A. Yes.

Q. What do these books represent now; does that represent the records of the Sun Kwung Tong Company or your personal records, or what do they represent?

A. It represents the Sun Kwung Tong Company's records.

Q. Were you a member of the Association?

A. Yes.

Q. What position, if any, did you have in it?

A. I was its manager there.

Q. As manager, were you required to keep the records? A. Yes.

Q. You made these records regularly in the course of business? A. Yes.

Q. Were you also Treasurer of the Company as well as Manager? A. Yes.

Q. They turned the funds of that Company over to you as Treasurer? A. Yes.

Q. Does that book represent all of the records of the Company?

A. No, these are not the complete records of the Sun Kwung Tong Company.

Q. What does that page represent there?

A. These are the names of the persons that have a share in the Company.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. That is? A. Yes.

Mr. Flynn: Maybe I can clear that up.

Mr. McAllister: All right, go ahead.

Q. (By Mr. Flynn): Kok Si, can you point out the book entry showing where you received \$1900 belonging to the Sun Kwung Tong Company? I want you to point it out so we can have it marked.

(The witness indicates in the book.)

Q. The page you are referring to in this book bears an entry showing you were holding as Treasurer for the Sun Kwung Tong Company \$1900, is that correct? A. Yes.

Mr. McAllister: And can we have that marked as Exhibit A, as your Exhibit A for identification?

Mr. Flynn: Yes.

(Thereupon the page was marked as Petitioners' Exhibit A for identification.)

Q. (By Mr. Flynn): Now, will you get the book entry showing an entry of \$800, belonging to the Chinese Chamber of Commerce, of Phoenix, Arizona?

(The witness complies.)

Mr. Flynn: May we have that marked as Petitioners' Exhibit B? Is that the entry on the back of the book there; is this the entry (indicating)?

A. No, that is just the names.

Q. Where is the page showing this \$800 for the Chinese Chamber of Commerce; is that the entry (indicating on page)? A. Yes.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Mr. Flynn: May we have that marked as Petitioners' Exhibit B for identification?

Mr. McAllister: I object to it for the time being. You can go ahead, put it in over my objection.

Q. (By Mr. Flynn): Did you make that entry, Kok Si? A. Yes.

Q. That entry was made when you received the money? A. Yes.

Mr. Flynn: The record may show that the objections are saved until at the time of the trial.

(The page was marked as Petitioners' Exhibit B for identification.)

Q. (By Mr. Flynn): Do you have any bookkeeping entry showing the receipt of \$2500 Cashier's check from Gee Soot Hong?

A. I don't have no record. The only thing I had was the check.

Q. Is that true of the check of Yee Wo and Company, Tom Nom and Fong W. Yuey?

A. All I had was the check.

Q. Can you show us the bookkeeping entry where you were holding \$1900 for the Wing Mae School in China?

(The witness complies.)

Q. Is this the entry that you made (indicating)?

A. Yes.

Q. That reflects that you are holding \$1900 for the Wing Mae School in China? A. Yes.

Q. And did you make that entry? A. Yes.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Mr. Flynn: May we have that marked as Petitioners' Exhibit C for identification?

(The page was marked as Petitioners' Exhibit C for identification.)

Mr. Flynn: Do you have a bookkeeping entry showing a \$1500 account of the Chinese School at Phoenix, Arizona?

A. I am not sure whether it is here or not. I will take a look.

Mr. Flynn: Tell him to go ahead and see if he can find it.

(The witness complies.)

A. I have one book here, but there is still another book at Yeun Lung's place that has entries of money put in by different parties to start that school.

Mr. Flynn: Would it be agreeable to you to get that and have the proper entry marked as a Petitioners' Exhibit?

Mr. McAllister: Who kept that record?

Q. (By Mr. Flynn): Who kept that record which you say is at Yeun Lung's place?

A. Those records were kept by the school teacher. The school teacher passed away and Yeun Lung, being the principal, he took the books, but the money was always in my possession.

Q. And the book reflects a \$1500 entry?

A. Yes.

Q. And who made the entry in the book?

A. I think the school teacher entered those.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. He didn't make that himself?

A. No, I didn't.

Q. Now, do you have any books of the Chinese War Relief Association showing that you had \$14,000 in your possession the night you was arrested? A. Yes, they are here.

Q. Will you get those books, please?

A. Yes, here they are. These small books are just donations, shows donations from the Victory Parade.

Q. Do you have any bookkeeping entry showing the receipts of this \$14,000 for the Chinese War Relief Association?

A. Yes, they are all here.

Q. Which ones are they?

A. The biggest part of it in here, and then the most recent money I received are on these sheets of paper.

Q. Did you make these entries on these pieces of paper? A. Yes.

Q. And what do they show?

A. They show the money turned over to me on these different occasions that there was money collected, like, for instance, Double Ten, and from the Relief cans, China War Relief cans, Victory Parade, and also July 4th. The name of that donation was Seven-seven. That was something signifying when China went to war with Japan, and they call it "Seven-seven." All the money was taken in.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. These are receipts showing the amount of money?
A. Yes.

Mr. Flynn: May we have those marked?

(Five pages were marked as Petitioners' Exhibits D for identification.)

Mr. Flynn: What does this exhibit, I mean, what does this entry reflect?

A. The entries in this book show the money I received and some money that I paid out.

Q. Do they have anything to do with the Chinese War Relief Association?

A. This is the Chinese War Relief Association book.

Q. Did you transpose the money you received from those individual sheets into a ledger book of any kind?

A. The sheets here have not been entered in this main book yet.

Q. Does it have any entries showing the receipts for the Chinese War Relief Association in this book?

A. Yes, these are all the entries of the Chinese War Relief.

Q. That is just this one page?

A. All of it.

Q. The whole book?
A. The whole book.

Mr. Flynn: May we have it marked as Petitioners' Exhibit E for identification?

(The book was marked as Petitioners' Exhibit E for identification.)

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Mr. Flynn: These entries in Petitioners' Exhibit D were made by you, Kok Si? A. Yes.

Q. And the entries made on Petitioners' Exhibit E were made by you, were they not?

A. Yes.

Q. Now, were the books and the entries that you have testified to for the money that you were holding for the Sun Kwung Tong Company, the Chinese Chamber of Commerce. Gee Soot Hong, Yee Wo and Company, Tom Nom, Fony W. Yuey, Wing Mae School in China, the Chinese School of Phoenix, and the Chinese War Relief Association, were they all made in these books prior to October 11th, the day you were arrested? A. Yes.

Q. And they reflect the status of each account on the date of your arrest? A. Yes.

Q. Now, these books were taken by the arresting officers, were they not?

A. The day later the officers came and took the books.

Q. Was there any change made in any of the entries with reference to any of the accounts you have testified about here before they were taken?

A. There was no changes made.

Q. And how long were the books kept by the officers?

A. They kept them up until recently.

Q. And you secured them, did you not, through your attorney, George Wilson? A. Yes.

Q. Are you having them audited at the present time? A. Yes.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. What are these entries, Kok Si (showing document to witness)?

A. These are the books showing the donations from the different Chinese parties from different parts of Phoenix.

Q. To the Chinese Relief Association?

A. To the Chinese Relief Association

Mr. Flynn: May we have this marked as Petitioners' Exhibit F for identification?

(The document was marked as Petitioners' Exhibit F for identification.)

A. And they are only for the Victory Parade.

Q. (By Mr. Flynn): Did you make these entries noted on Petitioners' Exhibit F for identification?

A. These were not entered by me. These were entered by the different parties responsible for that certain group.

Q. In other words, the persons that collected the money from the different groups turned this over to you when they turned the money over to you?

A. That is right.

Mr. Flynn: I believe that is all, I think, Charlie.

Cross-Examination

By Mr. McAllister:

Q. How long have you lived in Phoenix?

A. Approximately 23 years.

Q. When was the Sun Kwung Tong Company organized?

A. June, 1924.

Q. And you have been one of the associates all that time?

A. Yes.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. Where was its office?

A. The Sun Kwung Tong Company? 113 East Madison.

Q. Have you lived there all the time you have been in Phoenix? A. Yes.

Q. How long have you been a member of the Chinese Chamber of Commerce?

A. Ever since—I have been a member of the Chinese Chamber of Commerce ever since its existence.

Q. Do you know where it was organized?

A. No, I don't. It might show in the books.

Q. Have you been an officer in the Chamber of Commerce? A. Yes.

Q. Have you always kept its records?

A. Yes.

Q. What about the Chinese Relief Association, when was it organized?

A. It was organized approximately around '37 or '38.

Q. And Arizona, or Phoenix, was its headquarters at 113 East Madison Street?

A. Are you talking about the Chinese War Relief Association? A. Yes.

A. Whenever there is a meeting to be held it was at the Chinese School.

Q. That is the school that is at Phoenix, is it?

A. Yes.

Q. Where is that located?

A. On South Second Street.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. Did that operate during the last year, the school, that is?

A. It is still there. We still pay rent but we don't have any students or teachers.

Q. Are you an officer in the Relief Association too? A. Yes.

Q. What about this Wing Mae School in China; what kind of a school is it?

A. The Wing Mae School in China is a school supported by the Chinese in foreign countries. They donate money to be sent back to help support the school.

Q. Where is it located?

A. Canton, Hoy Ping.

Q. Did you have an organization here which collected funds for that? A. Yes.

Q. Did you have your own business located at 113 East Madison Street too?

A. Yes, the Sun Kwung Tong Company, which I had a share.

Q. That was your principal business here, was it? A. Yes.

Q. What was the nature of that company's business?

A. Selling and buying Chinese merchandise when it was available.

Q. It was made up of yourself and a number of other local Chinese merchants? A. Yes.

Q. Well, how did it operate? That is, if you sold merchandise did you report back to the other partners, or what?

(Deposition of Ung Too Thet, alias Ong Kok Si.)

A. I kept records and showed them the records whenever they wanted to see them, whenever it was the proper time to show them.

Q. Did you handle any of the merchandise or the orders for the merchandise? A. Yes.

Q. How was it formed originally? Each person donate and contribute so much money and formed a pool, or something?

A. Everybody put up so much and formed something like a pool.

Q. This safe that you mentioned, that was in your office, was it? A. Yes.

Q. Where was that, in the basement or upstairs at 113 East Madison?

A. It was on the main floor.

Q. Do you recall whether it was open on the night of October 11th, I believe it was, when the officers came down there? A. Yes.

Q. And all of these funds that you mentioned and those checks were in that safe? A. Yes.

Q. How did you have them in there; that is, was the money in one spot and the bonds, or I mean the checks, in something else, or what?

A. It was all in the safe.

Q. Loose in the safe?

A. Yes, it was all loose in the safe.

Q. Was the currency bundled up, or anything?

A. Well, some was bunched up in hundreds and five hundreds, and some were loose.

Q. And those two checks that were mentioned from Gee Soot Hong and Yee Wo and Company;

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Tom Nom and Fong W. Yuey, were they in there with the rest of the money? A. Yes.

Q. Were your account books in there too?

A. No, the books were not in the safe.

Q. Did you ever keep any of your money in the bank? A. Yes.

Q. Did you have any of your money here in the safe that night?

A. Most of it belonged to different organizations. Might have a little bit. I don't know.

Q. Well, if you had some, how would it be in there, along with the other paper and silver money?

A. Most of the money belonged to the organizations. I don't know even if there was any money of mine or not.

Q. But did any of these organizations have a bank account? A. No.

Q. How long had you been keeping money in there for these various people?

A. I have been Treasurer of all of these organizations ever since their existence.

Q. When you got ready to turn the money over to one of the organizations, how would you do it?

A. I'd open the safe and hand them the money.

Q. You just got the first money you came to if it equaled the right amount?

A. I would just give them the first money I came to just so long as I gave them the right amount.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. You stated there was \$1900 belonging to this Sun Kwung Tong Association. How long did you have it in there?

A. It has been in my trust ever since we started the company.

Q. That was the money that was given—that is, each one put in so much money and that is the total amount, is that right? A. Yes.

Q. Did that company have any bank account?

A. Yes.

Q. Where was that?

A. At the Arizona Bank—the bank that is closest to Chinatown.

Q. That must be the Central Avenue bank, the First National Bank of Arizona. Was that the only one—is that the only account that the Company had?

A. There is an account at the Phoenix Bank also.

Q. That means the one on First Avenue?

A. Yes.

Q. Did you write checks on those accounts?

A. Yes.

Q. When was this approximately \$800 of the Chinese Chamber of Commerce money turned over to you?

A. It was turned over to me a long time ago. That was just the balance. The dues are paid in and turned over to me, and that was the balance of what was used.

Q. How long ago was that?

A. It shows in the book. I don't remember.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. Was it turned over to you all at once?

A. It was not turned all at once. It was a little at a time.

Q. And is that true of this other money from these other organizations that was turned in maybe a few hundred dollars now and maybe a little more later? A. Yes.

Q. How long had you been holding some of this money aside from that \$1900 which you said you had been holding since 1924?

A. I can't tell you the exact date of so many.

Q. Did a good many members of the Chinese community sort of consider you a banker for them?

Mr. Flynn: That is objected to. That calls for a conclusion.

Mr. McAllister: Let him answer it.

A. A lot of small stores that I cashed checks for and used me as a bank.

Q. (By Mr. McAllister): You used to cash checks there from the money in your safe all the time? A. Yes.

Q. These \$2500 checks from San Francisco. You stated those were to be used in buying some property? A. Yes.

Q. Who was going to buy the property?

A. Henry Ong.

Q. And who was going to handle the deal?

A. He said Henry Ong was the party that recommended it to Tom Nom and Gee Soot Hong were the parties that were supposed to make the transaction.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. That is, they were going to purchase the property. Were you interested in buying the property too? A. No.

Q. You weren't going in three ways on the partnership?

A. It was going to be bought by the Suey Yung Association.

Q. Is that a local association?

A. Yes, it has a branch in San Francisco.

Q. Are you a member of that Association?

A. Yes. I am the Suey Yung Association's Treasurer. That is the reason the money was turned over to me.

Q. You were going to buy it for the Association and not for yourself; that is, the three of you weren't partners?

A. Yes, it was for the Association.

Q. Do you know how long the actual identical money that was in that safe had been in there?

A. I don't remember how long it has been in there, because I used that cash for cashing checks at various times.

Q. And you put other money of your own in there in place of it, is that right?

A. If I cashed the check, I cashed the check at the bank and replaced the money in there.

Q. You did have some money in there that was received for selling opium, didn't you?

A. No.

Q. Isn't it true that the officers found several thousand dollars worth of marked money scattered through there? A. No.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. You don't know whether they did or not?

A. No, I don't.

Q. Let's see, I believe there were some bonds found in this safe at the same time on the 13th of October, isn't that correct? A. Yes.

Q. Were those in your name or somebody else's?

A. Some in mine and some belonging to other parties.

Q. Were those returned to you or not?

A. Yes, they were returned.

Q. None of the bonds belonged to any of these associations or organizations?

A. No, they didn't belong to the different organizations or associations.

Q. You were just holding them there for either security or safekeeping?

A. They were just put in my possession for safekeeping.

Q. You didn't have any of them for security?

A. No, they were just for safekeeping.

Q. How about this Chinese Relief money, how often did you send it overseas?

A. Sometimes I held it for a little while and sometimes I didn't hold it very long. Recently, for the past few years, we were not able to send the money, so that is the reason I had it.

Q. Was this Association connected with the National Relief Association?

A. This is a part of the Relief Association, a branch of the Relief Association. The money was sent direct to Chungking.

(Deposition of Ung Too Thet, alias Ong Kok Si.)

Q. That is, each branch sends the money in; you don't know what the other branches did, none of these other organizations had a bank account?

A. No.

Q. It was the Sun Kwung Tong Company?

A. Yes.

Q. Do your records here show the records of the money in the bank of that Company?

A. It don't show it.

Q. You have been keeping these records personally ever since each one of the organizations started, is that correct? A. Yes.

Q. And when do you make the entries, the day you get the money or some time afterwards?

A. I very seldom entered it the very same day. I always waited until all of that had been turned over to me, and then I write it down.

Q. This reflects all of the financial records of all of these financial organizations, is that correct?

A. Yes.

Mr. McAllister: That is all I have.

Mr. Flynn: That is all.

(The witness was excused.)

Mr. Flynn: There is a possibility that the witness may be started out of the Continental limits of the United States prior to the production of the testimony taken in this deposition. In the event he is not present to affix his signature hereto, the same will be considered waived by both parties hereto, right?

Mr. McAllister: Okay.

The foregoing 36 typewritten pages, comprising my testimony, and any changes, if any, are noted in ink and the same is a true and correct transcript of my testimony.

Since I do not read English, the testimony was read and interpreted to me by Mr. Walter Ong, the individual who acted as the interpreter in the taking of this deposition.

UNG TOO THET
ONG KOK SI.

Signature of the Witness.

State of Arizona,
County of Maricopa—ss.

Be It Known that I took the foregoing deposition pursuant to the annexed Order for Taking Deposition; that I was then and there a Notary Public in and for the County of Maricopa, State of Arizona, and by virtue thereof, authorized to administer an oath; that the witness before testifying was duly sworn by me to testify to the truth, the whole truth and nothing but the truth; that the deposition was reduced to typewriting under my direction, and was carefully read to the witness before he signed the same.

Dated at Phoenix, Arizona, this, the 5th day of March, 1946.

[Seal] /s/ LOUIS L. BILLAR,
Notary Public.

My commission expires March 27, 1947.

[Title of District Court and Cause.]

ORDER FOR THE TAKING OF
A DEPOSITION

Upon reading the petition filed in the above-captioned matter and it appearing to the Court that the petitioners are entitled to the relief prayed for;

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that the petitioners be and they are hereby authorized to take the deposition of Ung Too Thet, alias Ong Kok Si, upon written interrogatories in the Grand Jury Room of the United States Court House, City of Phoenix, Arizona, on the 26th day of February, 1946.

It Is Further Ordered that the said deposition be taken in accordance with the Rules of Civil Procedure and before a person authorized by said Rules to take said deposition.

It Is Further Ordered that the said deposition shall cover the subject matter touching all facts of and concerning the allegations contained in the petition on file herein wherein the issuance of this Order is requested.

Done in open court this 25th day of February, 1946.

[Endorsed]: No. 11771. United States Circuit Court of Appeals for the Ninth Circuit. William P. Stuart, United States Collector of Internal Revenue in and for the State of Arizona, Appellant, vs. Henry Ong, President of Sun Kwung Tong Company, an association, Chinese Chamber of Commerce of Phoenix, a corporation, Frank Ong as Chairman of the Wing Mae School in China, an association, Yeun Lung, Chairman of the Chinese School of Phoenix, Arizona, an association, and Fred Wong, Chairman of the Chinese War Relief Association, an association, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed October 27, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

